TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 246.

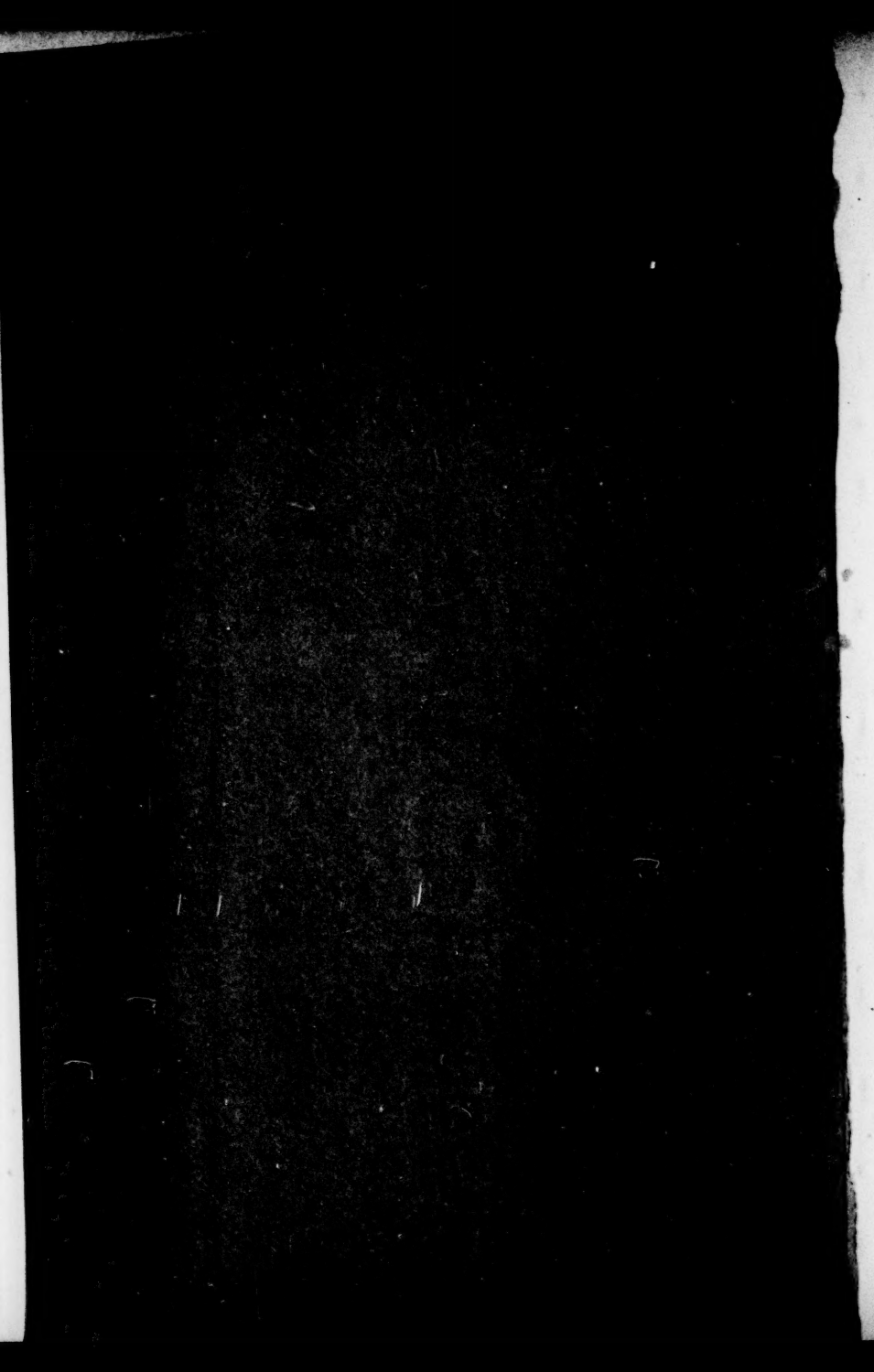
HENRY HAYES, ADMINISTRATOR OF GEORGE HAYES, DECEASED, APPELLANT,

vs.

DUNDAS T. PRATT, EXECUTOR OF GEORGE HAYES, DECEASED, AND THE HAYES MECHANICS' HOME.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

FILED OCTOBER 15, 1888.



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1 UNITED STATES OF AMERICA, *ss:*

To Dundas T. Pratt, executor of the last will and testament of George Hayes, deceased, and The Hayes Mechanics' Home, a corporation of Pennsylvania, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to an appeal filed in the clerk's office of the United States circuit court for the district of New Jersey, wherein Henry Hayes, administrator of George Hayes, deceased, is appellant, to show cause, if any there be, why the judgment rendered against the said appellant, as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John T. Nixon, one of the judges of the United States circuit court for the district of New Jersey, at the city of Trenton, in the said district, this fourth day of November, one thousand eight hundred and eighty-seven.

JNO. T. NIXON, *J.*

[Endorsed:] United States circuit court, district of New Jersey. In equity. Dundas T. Pratt, ex't'r of George Hayes, & *al. vs.* Henry Hayes, adm'r of George Hayes, dec'd. Citation on appeal. A. Q. Keasbey & Sons, Newark, N. J. Filed Nov. 4, 1887. S. D. Oliphant, clerk.

2 UNITED STATES OF AMERICA, *ss:*

To Dundas T. Pratt, executor of the last will and testament of George Hayes, deceased, and The Hayes Mechanics' Home, a corporation of Pennsylvania, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to an appeal filed in the clerk's office of the United States circuit court for the district of New Jersey, wherein Henry Hayes, administrator of George Hayes, deceased, is appellant, to show cause, if any there be, why the judgment rendered against the said appellant, as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

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phant, clerk. Service of a copy of within citation on Nov. 5th, 1887, acknowledged. John R. Emery, compl'ts' sol'r. Nov. 7, '87.

A true copy.

[The Seal of the U. S. Circuit Court, Dist. of New Jersey.]

S. D. OLIPHANT, *Clerk.*

3 United States Circuit Court, District of New Jersey. In Equity.

DUNDAS T. PRATT, Executor of George Hayes, & *al.*
vs.
HENRY HAYES, Administrator of George Hayes, Deceased.

The above-named defendant, conceiving himself aggrieved by the final decree entered on the twenty-eighth day of October, in the year eighteen hundred and eighty-seven, in the above-entitled cause, doth hereby appeal therefrom to the Supreme Court of the United States, and he prays that this his appeal may be allowed, and that a transcript of the record, proceedings, and evidence in the cause, duly authenticated, may be sent to the Supreme Court.

November 3, 1887.

A. Q. KEASBEY & SONS,
Solicitors of Def't.

(Endorsed:) United States circuit court, district of New Jersey. In equity. Dundas T. Pratt, ex'r of Geo. Hayes, & *al. vs.* Henry Hayes, adm'r of George Hayes, dec'd. Petition of appeal. A. Q. Keasbey & Sons, Newark, N. J. Allowed Nov. 4, 1887. Jno. T. Nixon, J.

4 Circuit Court of the United States, District of New Jersey. In Equity.

DUNDAS T. PRATT, Executor of George Hayes, *et als.*, Complainant-,
vs.
HENRY HAYES, Administrator of George Hayes, Deceased, Defendant.

Know all men by these presents that we, Henry Hayes, E. Cortlandt Drake, and John I. Young, all of the city of Newark, Essex county, New Jersey, are held and firmly bound unto Dundas T. Pratt, executor of George Hayes, deceased, and The Hayes Mechanics' Home, the complainants in the above cause, in the sum of ten thousand dollars, to be paid to the said Dundas T. Pratt, executor of George Hayes, and The Hayes Mechanics' Home, their executors, administrators, successors, or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the third day of November, eighteen hundred and eighty-seven.

The condition of the above obligation is such that whereas the above named Henry Hayes, administrator, with the will annexed, of George Hayes, deceased, has appealed from the above court
5 to the Supreme Court of the United States to reverse the decree rendered in the above-entitled cause by the circuit court of the United States for the district of New Jersey:

Now, therefore, if the above-named Henry Hayes, administrator, with the will annexed, of George Hayes, deceased, shall prosecute his said appeal with effect and answer and pay all damages and costs in case he shall fail to make his plea good, then this obligation to be void; otherwise to remain in full force and virtue.

HENRY HAYES. [L. S.]
E. CORTLANDT DRAKE. [L. S.]
JOHN I. YOUNG. [L. S.]

Signed, sealed, and delivered in the presence of—
C. N. WILLIAMS.

STATE OF NEW JERSEY, *County of Essex,* } ss:

Henry Hayes, being duly sworn, says that he is worth ten thousand dollars over and above his debts and liabilities.

HENRY HAYES.

Subscribed and sworn to before me this third day of November, 1887.

C. N. WILLIAMS,
M. C. C. of N. J.

STATE OF NEW JERSEY, *County of Essex,* } ss:

E. Cortlandt Drake, being duly sworn, says that he is worth ten thousand dollars over and above his debts and liabilities.

6 E. CORTLANDT DRAKE.

Subscribed and sworn to before me this third day of November, 1887.

C. N. DRAKE,
M. C. C. of N. J.

STATE OF NEW JERSEY, *Essex County,* } ss:

John I. Young, being duly sworn, says that he is worth ten thousand dollars over and above his debts and liabilities.

JOHN I. YOUNG.

Subscribed and sworn to before me this third day of November, 1887.

C. N. WILLIAMS,
M. C. C. of N. J.

(Endorsed:) Circuit court of the United States, district of New Jersey. In equity. Dundas T. Pratt, executor of George Hayes, deceased, *et als.*, complainants, *vs.* Henry Hayes, administrator of George Hayes, dec'd, defendant. Bond on appeal to U. S. Supreme Court. Approved Nov. 4, 1887. Jno. T. Nixon, J. Filed Nov. 4, 1887. S. D. Oliphant, clerk.

7 To his honor Theodore Runyon, chancellor of the State of New Jersey:

Humbly complaining, show unto your honor your orators, Dundas T. Pratt, succeeding executor of the last will and testament of George Hayes, late of the city and county of Philadelphia, in the State of Pennsylvania, deceased, and The Hayes Mechanics' Home, a corporation located in the city of Philadelphia aforesaid and organized under the laws of the State of Pennsylvania:

1. That the said George Hayes, deceased, departed this life on or about the first day of June, A. D. 1857, being at the time of his decease a resident of and having his domicile in the city of Philadelphia, in the State of Pennsylvania, of which city he had been a resident for more than fifteen years at the time of his decease.

2. That at the time of his decease the said George Hayes was seized and possessed of a considerable real and personal estate, the principal and most valuable portion of said real estate being situated in the said city of Philadelphia, one parcel of said real estate, however, being a tract or lot of land situate on Broad street, in the city of Newark and State of New Jersey.

3. That before his decease the said George Hayes duly made, executed, and published his last will and testament, bearing date on the sixteenth day of June, 1855; that the same was executed and published with all the formalities required by law for devising real estate in the States of Pennsylvania and New Jersey, and that said George Hayes, after executing and publishing the said will and testament, died without revoking or altering the same, and that a copy thereof is hereto annexed, marked Schedule No. 1.

8 4. That in and by his said will and by the last section thereof the said testator appointed his brother, Jabez W. Hayes (then and until his death a resident of said city of Newark), and Lewis E. Wells, of the city of Philadelphia, the executors of his will, and in the event of the death of either or both of them did appoint first your orator, Dundas T. Pratt, therein named Dundas Pratt, and next Horace H. Nichols, the brother-in-law of the testator, to be the executors of his said last will and testament.

5. That the said will was duly admitted to probate in the register's office in the city of Philadelphia on the twentieth day of June, 1857, and letters testamentary thereon granted to the said Lewis E. Wells, who took upon himself the burden of administering the said estate, the said Jabez W. Hayes not taking upon himself the execution thereof.

6. That the said testator in and by his said last will and testament, after providing for the payment of his debts and certain specific

legacies of personal property and certain pecuniary legacies, did as to all the rest and residue of his estate direct as follows:

"Item. As to *to* the rest, residue and remainder of my estate both real and personal, and of every nature and kind whatsoever, I give, devise and bequeath the same to my executors hereinafter named, their heirs, executors and administrators, forever, in trust to realize the same in the manner deemed by them the most advisable and keep the same invested in such manner as they in their discretion may deem most advantageous and to appropriate and use the principal or income thereof, for the purpose of founding and supporting or uniting in the support of any institution that may be then founded to furnish a retreat and home for disabled or aged and infirm and deserving American mechanics.

"Item. To better enable may said executors to carry out and perfect my intention as expressed in the last foregoing item, I authorize and empower them to sell all or any of my real estate
9 either at public or private sale either for cash or part cash, and reserving ground rent, or taking mortgage for the purchase money as the case may be, without liability of the purchaser or purchasers thereof as to the application or misapplication of the purchase, or administration monies."

7. That all of the said debts and legacies were fully provided for and *and* satisfied out of the personal estate of said deceased by the said Lewis E. Wells, executor as aforesaid, and his accounts thereof settled in the orphans' court of the city and county of Philadelphia, and that a balance of about $14,000 of the personal estate remain*ing* in his hands in trust for the person or persons entitled to the residue of the said estate under the said clauses of his will.

8. That the said deceased was in his lifetime a jeweler, and for fifteen years prior to his decease had carried on that business at the city of Philadelphia aforesaid, and had for a long time prior to his decease become especially interested in and identified with the mechanics of that city, and that for the purpose of best carrying out the provisions of his will in reference to the said charity provided for disabled, aged, and infirm mechanics a corporation was formed under the laws of the said State of Pennsylvania, on or about the twenty-first day of June, 1858, under the name, style, and title of the "Hayes Mechanics' Home;" that among the incorporators thereof (who were all required to be residents of Pennsylvania) were the said Lewis E. Wells, your orator Dundas T. Pratt, and Ferdinand J. Dreer, the former partner of the testator, and that the sole object of the said incorporation (as will appear by its articles of incorporation, to which or to certified copies of which your orators pray leave to refer) was the founding and providing of a retreat and home for disabled, aged, and infirm and deserving American mechanics, being the objects directed by said last will; that by an act of the legislature of the said State of Pennsylvania approved March
16th, 1861, the said charter of your orator The Hayes Me-
10 chanics' Home was confirmed and ratified, and it was in and by said act declared and provided that your orator the Hayes Mechanics' Home should have power to take and hold the

the said will and of paying over the same to your orator the Hayes Mechanics' Home, under the provisions of said will; that under and by virtue of the laws of the State of Pennsylvania your orator the Hayes Mechanics' Home is now the only institution entitled to the beneficial use of the said residuary estate for the purposes mentioned in said will.

17. That your orator Dundas T. Pratt, executor as aforesaid, in his own behalf as such executor and in behalf of your orator the Hayes Mechanics' Home, of which he is the treasurer, has applied to said Henry Hayes to pay over to him as such executor or to the said home the said balance for the purposes of said trust, but he declines and refuses to pay over the same or any part thereof.

18. That to justify and give color to such refusal the said Henry Hayes gives out and pretends that as such administrator as aforesaid he has the power and authority to determine for himself and without consultation with your orators or either of them to what charity the said proceeds should be applied under said will; that the said Hayes Mechanics' Home is not, in his opinion, entitled to receive the same, and that he is authorized under the will, notwithstanding the founding of the said home for the purposes thereof, to give the said balance in his hands to other institutions,
14 and in particular he gives out and pretends that a certain hospital, located at Newark, and known as the Hospital of Saint Barnabas, is such institution as was contemplated by the will of the testator, and that he is entitled to give to said hospital the balance in his hands; but your orator expressly charges that said Henry Hayes, as such administrator, has no such power, and that the said hospital is not such institution as was contemplated by said will, even if the discretion of the executors under said will as to founding an institution had not been finally settled by the incorporation of the Hayes Mechanics' Home, as your orators insist and claim that said hospital is established for the purpose of the care, nurture, and maintenance of sick, infirm, aged, and indigent persons, and of orphan, half orphan, and destitute children, and providing for their temporal and spiritual welfare; that its moral and religious instruction are under the sole superintendence and solely according to the doctrines of the Protestant Episcopal Church, and that the same is managed as a sectarian institution; that it is not established for the purposes of a retreat or home of any kind, but is altogether different in its purposes and management, and is subject in its management to conditions and restrictions which would prevent the persons intended by said will to be benefited by said fund or some of said persons from receiving any benefit therefrom.

And said Henry Hayes further gives out and pretends that he has paid over the said sum to the said hospital, and that on that account he should not be called to account for the same; but your orators charge that if this has been done it has been done against the protest of your orators, and knowing that your orators claimed the same for the Hayes Mechanics' Home, and that it has been done without the approval of any court in this State or elsewhere, and without any notice to your orators, and in violation of the express

agreement made by said Henry Hayes that the funds should not be paid over until your orator's right to them was determined.

And your orator further charges that the said Henry
15 Hayes, at the time of the said payment of the said funds in his hands to or for the benefit of said hospital, being in doubt as to the propriety of said payment, and being well aware of the claim of your orators that your orator the Hayes Mechanics' Home was entitled to the same, before the said payment was made, required, and received from responsible persons, whose names are unknown to your orators, an agreement for indemnifying and saving him harmless from the claim of your orators and from any loss by reason of paying over the said funds to the said hospital; and your orators therefore claim that such payment was made at his own risk, and that your orators, if they are decreed to be entitled to said funds, are entitled to receive also from the said Henry Hayes, administrator as aforesaid, interest on the said sum from the time of said payment, besides their costs in this suit.

All which actings, doings, and pretences of the said Henry Hayes, administrator as aforesaid, are contrary to equity and good conscience.

To the end, therefore, that the said Henry Hayes, administrator as aforesaid, may, but without oath, full, true, and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here again repeated and he particularly interrogated thereto, and that an account may be taken of the amount which he has received belonging to the said estate and of the balance which remains in his hands or with which he should be charged for the purposes of the said trusts under said will; and that he may be decreed to pay over the same, with interest, to your orator Dundas T. Pratt, executor as aforesaid, for the purpose of being administered under said will in the State of Pennsylvania, or that the same may be, if this court so direct, be here at once administered under said will, and be at once paid over to your orator the Hayes Mechanics' Home; and that said Henry Hayes may also be decreed to pay your orators' costs and
16 charges in this matter, and that your orators may have such further and other relief as the nature of the case may require and as to your honor shall seem meet—

May it please your honor, the premises considered, to grant unto your orators the writ of subpœna of the State of New Jersey to be directed to the said Henry Hayes, as administrator of all and singular the goods, chattels, and credits of George Hayes, deceased, in the State of New Jersey, left unadministered by Jabez W. Hayes, deceased, and therein and thereby commanding him at a certain time and under a certain penalty therein to be named to appear and answer the charges and matters aforesaid, and to stand to, abide, and perform the decree of the court in the premises.

And your orators, as in duty bound, will ever pray, etc.

JOHN R. EMERY,
Solicitor for and of Counsel with Complainant.

SCHEDULE No. 1.

Be it remembered, that I, George Hayes, of the city of Philadelphia, jeweler, being of sound mind, memory and understanding, do make and publish this, my last will and testament in writing, as follows:

Item. I direct all my just debts and funeral expenses to be paid as soon after my death as can be conveniently done.

Item. I give, devise and bequeathe to my executors hereinafter named, the sum of twenty thousand dollars to keep invested in good and safe securities drawing interest, in trust to receive the income thereof, from time to time and pay over the same when so received, to my four nieces, Mrs. Frances Donington, Clara King and Ellen King, children of my deceased sister Amelia King, and my niece Amelia Nichols, daughter of my deceased sister Martha Nichols, in equal shares for and during all the term of their natural lives, free from the control of any husband, and after the deaths of either of my said nieces, the principal amount of five thousand dollars being one-fourth part thereof, to go to and vest in her issue if any and in default of issue, then to merge in the fund produced by my residuary estate as hereinafter provided.

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Item. As to my furniture, beds, bedding, books, plate, pictures and diamonds, I give, devise and bequeathe the same to my said four nieces or such of them as may be living at the time of my death, provided they agree on an equitable and satisfactory division of the same, otherwise I direct my executors to sell and dispose of the same and place the fund produced by said sale, with that produced by my residuary estate to be held by them for like uses and purposes.

Item. I give and devise the choice of the two portraits of my deceased wife to my mother-in-law Mrs. Joseph Paul, also the original daguerreotype of my said wife, and the other of said portraits to Mrs. F. I. Dreer.

Item. I give and devise my own portrait to my brother Jabez W. Hayes.

Item. I give and devise my wines and liquors to Ferdinand J. Dreer.

Item. It is my wish, and I hereby direct, that in the event of my partner, Mr. F. J. Dreer, continuing the business now conducted by the firm of Dreer and Hays, that my share of capital in said business be allowed to remain for the space of five years, after my death, upon his giving to my executors satisfactory security for its payment within that time in annual instalments, together with lawful interest therefor, said amount of capital to be ascertained by two appraisers, one of which is to be chosen by my executors and the other by said F. J. Dreer, and if they two cannot agree they are to choose a third, and in any future arrangements of said business it is my wish that Mr. Sears be allowed to retain the same position and interest that he now has in the same. In the event of Mr. Dreer not deciding to take my interest in the firm I desire Mr. Sears may be al-

lowed to take the same on the same conditions mentioned as to Mr. Dreer.

Item. I give and devise my watch and chain to George Coulter, son of William Coulter, of Jersey City.

Item. I give and devise and bequeathe to my executors
18 hereinafter named, the sum of five thousand dollars to keep the same invested in some good and safe security drawing interest, in trust to receive the income thereof from time to time and pay over the same when so received to my nurse Mrs. Ann Engles, for and during all the term of her natural life, and in the event of her death before her son Francis has reached the age of sixteen years then to and for the use, education and support of her said son until he arrives at the age of sixteen years, after which the same is to go and merge in my residuary estate for the uses and purposes hereinafter provided.

Item. I give, devise and bequeathe unto the Northern Home for Friendless Children the sum of five thousand dollars, to be paid them by my executors freed of and clear from the payment of any collateral inheritance tax and I will and direct my said executors to pay out of my residuary estate all or any collateral inheritance tax which might be charged against any bequest by me made.

Item. As to the rest, residue and remainder of my estate, both real and personal and of every nature and kind whatsoever, I give, devise and bequeathe the same to my executors hereinafter named, their heirs, executors and administrators forever, in trust to realize the same in the manner deemed by them the most advisable, and keep the same invested in such manner as they in their discretion may deem most advantageous and to appropriate and use the income or principal thereof for the purpose of founding and supporting or uniting in the support of any institution that may be then founded to furnish a retreat and home for disabled or aged and infirm and deserving American mechanics.

Item. To better enable my said executors to carry out and perfect my intentions as expressed in the last foregoing item, I authorize and empower them to sell all or any of my real estate either at public or private sale, either for cash or part cash and reserving ground rent or taking mortgage for the purchase-money as the case may be, without any liability of the purchaser or purchasers
19 thereof as to the application or misapplication of the purchase or consideration monies.

Lastly. I nominate, constitute and appoint my brother Jabez W. Hayes, and my friend, Dr. Lewis E. Wells, (and in the event of the death of either or both of them, then I appoint, first, Dundas Pratt, and next my brother-in-law, "Horace H. Nichols," to supply vacancy) to be the executors of this, my will, and declare this to be my last will and testament, hereby revoking all or any wills by me heretofore made.

In testimony whereof, I, the said George Hayes, have hereunto set my hand and seal, the sixteenth day of June, in the year of our Lord, one thousand eight hundred and fifty-five, (1855).

GEORGE HAYES.

Signed, sealed, published, and declared by the said testator, George Hayes, as and for his last will and testament, in the presence of us, at his request, in his presence, and in the presence of each other have subscribed our names hereto as witnesses. The words "and chain," on the first page, interlined before signing, and also the words "Horace H. Nichols" first interlined between the sixth and seventh from the bottom.

JACOB BENNETT.
WILLIAM POTTS.

Exemplified copy of probate of will and of letters testamentary to complainant, Dundas T. Pratt, filed Aug. 11, 1884, *pro ut* the same.

Suit removed to the United States circuit court, on petition of defendant, November 1, 1884 (*pro ut* the same).

20 Circuit Court of the United States for the District of New Jersey.

DUNDAS T. PRATT, Executor of George Hayes, Deceased, and Another, Complainants,
vs.
HENRY HAYES, Administrator of George Hayes, Deceased, Defendant.
} In Equity.

The answer of Henry Hayes, administrator of George Hayes, deceased, to the bill of complaint of Dundas T. Pratt, executor of George Hayes, deceased.

This defendant, now and at all times hereafter saving and reserving unto himself all and all manner of benefit and advantage of exception or otherwise to the errors and insufficiencies in said bill of complaint contained, for answer thereto, or to so much and such parts thereof as this defendant is advised it is material or necessary for him to make answer unto, answering, says—

That he admits it to be true that the said George Hayes, deceased, departed this life on or about the first day of June, 1857, and that he was at the time of his decease a resident of and having his domicile in the city of Philadelphia, in the State of Pennsylvania, and that he has been a resident of that city for about ten (but not fifteen) years, as stated in the bill at the time of his decease; but this defendant also says that the said George Hayes was born in the State of New Jersey, where his family had long resided, and had lived in the city of Newark, in the State of New Jersey, during his whole life, until within ten years of the time of his death, as hereinafter stated.

21 Second. This defendant admits that at the time of his decease the said George Hayes was seized and possessed not only of one parcel but of two parcels of real estate situate on Broad street, in the city of Newark and State of New Jersey, hereinafter mentioned.

Third. This defendant admits that before his decease the said George Hayes duly made, executed, and published his last will and testament, bearing date the sixteenth day of June, eighteen hundred and fifty-five, and that he died without revoking or altering the same, and that a true copy thereof is annexed to the said bill.

Fourth. This defendant admits that by the said will the testator appointed his brother, Jabez W. Hayes, then and until his death a resident of said city of Newark, and Louis E. Wells, of the city of Philadelphia, the executors of his will, and in the event of the death of either or both of them did appoint, first, the said complainant, Dundas T. Pratt, and next Horace H. Nichols, his brother-in-law, to be the executors of his said will, and that the said will was duly admitted to probate in the register's office in the city of Philadelphia on the 25th of June, 1857, and letters testamentary thereon granted to the said Louis E. Wells, who took upon himself the burden of administering the said estates, Jabez W. Hayes not taking upon himself the execution thereof in the State of Pennsylvania.

Fifth. And this defendant admits that with regard to the rest and residue of his estate the said George Hayes did provide as set forth in the sixth paragraph of the complainants' bill, and that all the debts and legacies were fully provided for and satisfied out of the personal estate of the deceased by said Louis E. Wells, executor in Pennsylvania; and this defendant believes that the accounts of said executor were settled in the orphans' court in the city of Philadelphia, and that a balance remained in his hands in trust for
22 the persons entitled to the residue of said estate, but as to the nature and terms of said accounts or the amount of said residue this defendant has no information, and leaves the complainants o make such proof thereof as they may deem necessary.

Sixth. This defendant admits it to be true that the said George Hayes, deceased, was in his lifetime a jeweller, and that prior to his decease he had carried on that business in the city of Philadelphia and had become interested and identified with the mechanics of that city; but this defendant has no knowledge or information except from the complainants' bill as to the formation of the corporation mentioned in the eighth paragraph of said bill under the laws of the State of Pennsylvania nor as to the incorporators thereof, nor as to the manner in which the said executor in Pennsylvania has dealt with the said corporation with reference to carrying out the purposes of said will, and leaves the complainants to make such proof thereof as they may deem necessary.

Seventh. And this defendant, further answering, says that he has no knowledge except from hearsay and the statements of said bill as to the payment by said executor in Pennsylvania of the balance in his hands of the residuary personal estate of said George Hayes or the conveyance of said real estate to the said corporation, as set forth in said bill, and he leaves the complainants to make such proof thereof as they may deem necessary.

Eighth. And this defendant, further answer-, says that he has no knowledge as to the time when the said complainant, Dundas T.

Pratt, became aware of the fact that the said George Hayes died seized of land in the State of New Jersey, but this defendant says on information and belief that the said fact was well known to the family of the said George Hayes and to said L. E. Wells, executor, the real estate in question being lands and buildings situate on the main street of the city of Newark, and having
23 been the property of the family of the said George Hayes for a long time prior to his death.

Ninth. This defendant, further answering, says that he admits it to be true that the said Jabez W. Hayes, on or about the fourth of August, 1857, proved the will of the said testator before the surrogate of the county of Essex and took upon himself the burden of the administration thereof; and he admits also that the said Jabez W. Hayes did not in his lifetime file any account of his administration of the estate, the same consisting wholly of real estate and the small rents which from time to time accrued thereon, and no debts of any kind existed against the said estate in New Jersey; and this defendant also admits that it is true that he never rendered any account of the estate in New Jersey to the said Louis E. Wells, who was the executor of the estate of the said deceased in Pennsylvania; and it is also true that the said Louis E. Wells, the executor in Pennsylvania, never rendered to the said Jabez W. Hayes, the executor in New Jersey, any account of his administration of the estate of the said deceased administered in Pennsylvania.

Tenth. This defendant admits that the said Jabez W. Hayes departed this life on or about the fourteenth of January, 1882, and that the said Louis E. Wells also departed this life some time in the year 1876; and this defendant believes that the complainant Dundas T. Pratt has been, since the death of the said Louis E. Wells, appointed by the register of wills of said county the succeeding executor of said last will and testament in the State of Pennsylvania; and also that after the death of the said Jabez W. Hayes, deceased, this defendant, his son, received from the surrogate of the county of Essex, in the State of New Jersey, on or about the 12th of December, 1882, letters testamentary upon all and singular the goods, chattels, rights, and credits of the said George Hayes in the State of New Jersey, left unadministered by the said Jabez W.
24 Hayes, deceased, and that he took upon himself the burden of such administration; that he sold as such administrator two tracts of land situate in Newark and received the proceeds of the sale thereof and filed his final account as such administrator, which was allowed by the orphans' court of the county of Essex on the 8th of January, 1884, at which time he had in his hands a balance of five thousand one hundred and fifty-three dollars and twenty-seven cents ($5,153.27), being the net residue of said estate of said George Hayes.

Eleventh. And this defendant also admits that there are no debts of the testator or legacies under his will payable out of said fund to any creditors or legacies in the State of New Jersey, and that the balance in the hands of this defendant as administrator consists entirely of the proceeds of the sale of the residuary real estate of the

said deceased and the rents thereof; but this defendant denies that the said Dundas T. Pratt, as executor in Pennsylvania, is entitled to receive the same from this defendant for the purpose of administering the same under said will or for the purpose of paying the same over to the Hayes Mechanics' Home; and this defendant also denies that the said Hayes Mechanics' Home is now the only institution entitled to the beneficial use of said residuary estate in New Jersey for the purposes mentioned in said bill.

Twelfth. This defendant admits that the said Dundas T. Pratt, executor, has applied to this defendant to pay over to him or to the said court the said balance, and that this defendant has declined and refused to do so for the reasons hereinafter set forth.

Thirteenth. This defendant, further answering, says that the family of the said George Hayes had for many years been well-known residents of the city of Newark, in the State of New Jersey, and that the said George Hayes was born in the family homestead on Broad street, in the city of Newark; that in the year eighteen hundred and forty-five the estate was divided upon the death of his mother and a lot twelve feet in width on Broad street was set off to him for his share, his brothers and sisters giving him an additional piece at the end of said lot for the purposes of his business as a jeweller, which he soon after established on said premises; that he was also seized of one-fourth interest in the homestead property which had belonged to his mother; that he erected a factory upon his portion of said property and carried on the jewelry business there with success until the year eighteen hundred and forty-seven, when for the better advantage of his business thus established he removed to the city of Philadelphia and continued to carry on his business there until his death in 1857; that he had a brother, Jabez W. Hayes, and two sisters, all of whom lived and died in New Jersey; that the said George Hayes at the time of his death was seized of the real estate above mentioned in Broad street, and had been during his whole life, except ten years spent in Philadelphia, identified in interest and sympathy with the city of Newark and with the mechanical pursuits then carried on; that after his death his brother, Jabez W. Hayes, who had been named as one of his executors, declined to act as executor in the State of Pennsylvania, and the other executor, Louis E. Wells, who had been the book-keeper of said George Hayes, and was well aware of the fact that the property in Newark above mentioned belonged to the estate, declined on his part to take out letters testamentary in New Jersey or to take any part in the administration of the estate in that State, leaving the same wholly to the care and discretion of his co-executor, Jabez W. Hayes; that thereupon the said Jabez W. Hayes proved the will in this State and took upon himself the administration of the estate in New Jersey, taking possession of the property and receiving the rents thereof; that part of said property was an undivided interest in said homestead, which was incapable of division, and could not conveniently be sold, but continued undivided and unsold until the time

of his death; that eight or ten years before his death said
26 Jabez W. Hayes, in anticipation of the sale of said property and desiring to carry out the purposes of said will, determined te apply such portion of said proceeds as would constitute the residue of the estate in New Jersey to the object and purposes appointed by the will by uniting in the support of the Hospital of Saint Barnabas, then established in the city of Newark, and actively engaged in the objects set forth in second section of its charter, approved February 13, 1867, which section is in the following terms: "That the object of said corporation shall be the care, nurture, and maintenance of sick, infirm, aged, and indigent persons and of orphan, half orphan, and destitute children, and providing for their temporal and spiritual welfare by procuring or erecting a suitable building."

That in pursuance of such design the said Jabez W. Hayes, in the year 1876, obtained the advice of counsel to the effect that he might lawfully apply the residue of said estate to the purposes of the will by uniting in the support of said institution; that the said property remained unsold, and the said Jabez W. Hayes, having reached an advanced age and become incapacitated for active business by reason of failing health, did not succeed in turning said estate into money during his lifetime, and left the purposes which he had cherished as above mentioned unaccomplished at his death; that after his death and the appointment of this defendant the administrator, with the will annexed, of said George Hayes this defendant caused the estate to be sold and his account then rendered to the orphans' court and the residue of the estate to be ascertained, and thereupon, desiring to carry into effect the design which he knew to have been entertained by his father, made a communication on the 4th of March, 1884, to the trustees of the Hospital of Saint Barnabas, setting forth that it had been the desire of his father to apply the residue of said estate for the purpose of uniting in the support of the Hospital of Saint Barnabas, and proposing to the trustees to carry out the design of his father and the instructions of the testator
as expressed in the will by the transfer of the residue to the
27 Hospital of Saint Barnabas, to be solely and exclusively applied by it for the purpose of furnishing a retreat and home for disabled or aged, infirm, and deserving American mechanics, and asking the consent of that corporation to receive the fund and apply it to that purpose; that thereupon the board of trustees of the Hospital of Saint Barnabas, having that communication presented to it, passed the following resolution: "That whereas Henry Hayes, administrator, with the will annexed, of George Hayes, deceased, proposes to transfer to this institution the fund in his hands belonging to the estate of said George Hayes, and amounting to about five thousand dollars, remaining after settlement of his account in the orphans' court, which fund is to be solely employed for the purposes mentioned in said will: Resolved, That the Hospital of Saint Barnabas consents to receive said fund, and it hereby agrees to use such fund solely for the purpose of furnishing a retreat and home for disabled or aged and infirm deserving American mechanics, in accordance

with the will of the late George Hayes," which resolution was adopted on the 17th of March, 1884.

Fourteenth. And this defendant, further answering, says that upon receiving a copy of said resolution and proper indemnity from the trustees of the Hospital of Saint Barnabas against any claim that might lawfully be made against him arising out of such disposition of said residue this defendant did transfer and pay over to the Hospital of Saint Barnabas the whole of said residue upon the terms stated in said resolution; that the Hospital of Saint Barnabas at that time owned a tract of land on High street, in the city of Newark, with a large frame building, which it had owned a number of years and where the purposes of * * * its incorporation had been successfully carried on; that the said institution was at that time engaged in erecting a large and permanent building upon its land on High street, by means of which it would soon become able to carry out its beneficent purposes with greater efficiency; that the city of Newark is very largely a manufacturing city, and the benefi-
28 cent purposes of the Hospital of Saint Barnabas have been to a very large extent connected with the relief of disabled or aged and infirm deserving American mechanics; and this defendant upon the transfer of said money was assured by the trustees of said institution that upon receiving this fund it should be in a special manner devoted to providing such arrangements in the new hospital building as would in a special sense furnish a retreat and home for the class of persons mentioned in said will as the particular object of the testator's bounty; that the said new building is now almost completed, and the institution expects immediately to enlarge the sphere of its beneficence and to promote in a still greater degree the charitable purposes contemplated by said testator; and this defendant believes that the application of this fund arising out of the New Jersey property will be in entire accordance with the wishes of the said testator and with the intention and design of his brother, the executor who had special charge of the property out of which this fund had arisen; and this defendant further says that he is advised that such application is a lawful and proper exercise of the trusts reposed in his said executor by said testator, and that he is not bound, as the representative of said executor and the administrator of said estate, to transfer said fund to the said Dundas T. Pratt, the executor in Pennsylvania; that the proceeds of the estate in New Jersey have been already actually applied to the purposes of the testator in the manner hereinbefore mentioned, while, as this defendant is informed and believes, no steps have yet been taken by said corporation organized in Pennsylvania towards the accomplishment of those purposes except the purchase of a tract of land many years ago, upon which no buildings have yet been erected.

And this defendant respectfully submits to the court that the right of the executor in New Jersey to use the small fund in his hands arising out of the New Jersey property to unite in the sup-
29 port of the Hospital of St. Barnabas, already founded to promote the objects of the testator, was as full as the right of

the executor in Pennsylvania to apply the fund which came into his hands in that State to the alternative purpose mentioned in said will of founding and supporting a similar institution.

All which matters and things this defendant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays that the court may decree that the transfer of the said residue to the Hospital of St. Barnabas, as hereinbefore set forth, shall be deemed and taken to be a lawful execution of the trusts reposed in the executor, and in this defendant, as administrator, with the will annexed, by the will of the said George Hayes.

A. Q. KEASBEY & SONS,
Solicitors for Defendant.

Replication. Filed March 28, 1885.

These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the answer of the said defendant, for replication thereto say that they do and will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by *this* repliant-; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

JOHN R. EMERY,
Sol'r for Compl'ts.

30 United States Circuit Court, District of New Jersey.

Between—

DUNDAS T. PRATT, Executor of George Hayes, Deceased, *et al.*, Complainants,
and
HENRY HAYES, Administrator of Geo. Hayes, Deceased, Defendant.
} On Bill.

Testimony of witness in the above-stated cause taken before me, Corra N. Williams, an examiner appointed by said court for that purpose by an order dated May 6th, 1885, pursuant to notice, at the office of D. T. Pratt, 727 Walnut St., Philadelphia, Pa., this 11th day of May, 1885, at 2 o'clock p. m.

Present: John R. Emery, Esq., counsel for complainants; A. Q. Keabsby, Esq., counsel for defendants.

It is stipulated that the evidence may be taken by the examiner stenographically, and that he may transcribe the same and submit it to the court without the signature of the witnesses.

FERDINAND J. DREER, produced on behalf of the complainants, being duly affirmed, testified as follows:

Examined by Mr. EMERY:

Q. You are a resident of Philadelphia, Mr. Dreer?
A. Yes, sir.
Q. And have resided here for how many years?
31 A. I was born here, sir; seventy-three years.
Q. You are seventy-three years of age?
A. Yes, sir.
Q. Were you formerly in business in Philadelphia with Mr. George Hayes?
A. Yes, sir.
Q. In what business?
A. In the manufacture of gold chains and assaying gold.
Q. At what time did you form a business connection with Mr. Hayes?
A. Our partnership commenced on the first of October, 1841.
Q. How did Mr. Hayes come to form a partnership with you, and where did he previously live?
A. He lived in Newark, New Jersey.
Q. Did he then come to Philadelphia?
A. Yes, sir.
Q. Where he resided from that time up to the time of his death?
A. Yes, sir.
Q. In what year did he die?
A. June, 1857.
Q. When he came to Philadelphia was he a married man?
A. No, sir.
Q. Did he subsequently marry here?
A. Yes, sir.
Q. A lady of Philadelphia?
A. Yes, sir.
Q. Is she living?
A. No, sir; she died in 1849.
Q. Had they children?
A. No children.
Q. You mean no children living?
A. No children living.
Q. Had he had children?
A. Yes, sir; he had one child that died previous to the birth of the last one; the last child died at its birth; she died in childbirth.
32 Q. He did not marry after 1849?
A. No, sir.
Q. During all that time he was engaged in business with you?
A. Yes, sir.
Q. Now, in reference to the bequest made by Mr. Hayes in his will for the Hayes Mechanics' Home, were you one of the incorporators of the institution—the Hayes Mechanics' Home—which was incorporated after his death?

A. Yes, sir.

Q. As to the funds or estate which Mr. Hayes left at the time of his death, where was that accumulated, if you know, and in what way?

A. The condition it was in?

Q. No; not the condition it was in.

A. Made during his partnership with myself.

Q. During his partnership in this manufacturing business?

A. Yes, sir.

Q. You did not know of his ownership of real estate in Newark?

A. No, sir.

Q. Was Mr. Hayes buried in Philadelphia with all his family?

Q. Yes, sir; buried at Laurel Hill.

Cross-examined by Mr. KEASBEY:

Q. How old was Mr. Hayes when he came here?

A. My memory is bad. Well, I tell you, I think he was born in 1815. There was three years difference between his age and my own.

Q. You say his estate was accumulated in your partnership business. Do you mean to say that he had not anything which was not made in the partnership?

A. I think he had about six thousand dollars when he came here in stock and tools and notes of hand.

Q. Don't you know that he had some real estate in Newark, too?

33 A. Never was certain of it. I surmised that his mother's estate had never been divided. I never heard him say so. I always supposed there was something there; of what character I didn't know.

Q. When was the Hayes Mechanics' Home organized?

A. I think very shortly after his death.

Q. When did you first receive any moneys from his estate for that institution?

A. Well, that is a point I could not say, because Dr. Wells was the executor, and he had an interest in the business there which I paid over. I bought his interest, and I really have forgotten the amount that was paid.

Q. Did the Hayes Mechanics' Home have any stock subscribed?

A. There is one legacy left to it, a very small one, shortly after Mr. Hayes' death.

Q. Did it have any other resources than this legacy and the Hayes legacy?

A. An interest of upwards of ten thousand dollars I presented them with towards the building of this institution.

Q. What property did it receive from this bequest of Mr. Hayes?

A. He had landed property in Michigan, he had a house on Nineteenth street, and then his household effects and the interest he had in my business was what made up his estate.

Q. What was done with those funds?

A. They were paid over to the treasurer appointed by this home.

Q. Has there been any home really built?

A. The ground was purchased probably ten or twelve years ago; might be longer than that; sixteen acres. I deeded that ground to the institution at what it cost me.

Q. How much?

A. Ten thousand dollars. I can't exactly tell the amount.

Q. Where was it?

A. On Belmont avenue, near the park—near where the Centennial was.

34 Q. About what date?

A. I think about—it might be, probably, fifteen years ago.

Q. Up to that time had the Hayes Mechanics' Home purchased any building or afforded any appliances for the support of aged, infirm, and indigent American mechanics?

A. No, sir.

Q. What has been done with the land that you conveyed to them?

A. The land was rented out for pasture so much a year, merely to pay the taxes and keep it in order. Now we have a building started on it.

Q. When was the building started?

A. Within six weeks.

Q. Then up to the filing of the bill in this suit was there anything done by the Hayes Mechanics' Home to afford an asylum or refuge for aged and infirm American mechanics?

A. No, sir.

Q. Was anything done by the executors of Mr. Hayes practically for those purposes except only to convey the real estate and to transfer the residue of the personal estate to this corporation?

A. Yes, sir; in investing it from year to year.

Q. Was there anything else besides the transfer and investment?

A. No, sir; but we had had plans made twenty years ago, but found we had not sufficient funds; but we thought we would wait, because these Michigan lands only came into the market within ten or twelve years.

Q. Was there anything, in fact, done practically for the purpose of actually relieving aged and indigent American mechanics except the investment of the money and such donations as you have stated?

A. Well, we kept the association together. The incorporators and managers met once a year to elect their officers, and an auditor was appointed and audited the accounts.

Q. Did you do anything more than that?

35 A. No, sir.

Q. Did you know Mr. Jabez Hayes, the other executor?

A. Yes, sir; very well; many years.

Q. You knew that he lived in Newark, didn't you?

A. Yes, sir.

Q. Did you know that he proved the will in Newark, New Jersey?

A. No; I was not aware of it at all. I supposed that whatever interest was there he would look after.

Q. Was the arrangement between the executors here and him that whatever interest there was in New Jersey he should look after?

A. That I don't know. I am not positive about that.

Q. You were not one of the executors, actually?

A. No, sir.

Redirect by Mr. EMERY:

Q. Mr. Pratt has had active control and management of the affair and knows about the details which are not in your hands and expects to be examined upon them?

A. Yes, sir.

DUNDAS T. PRATT, one of the complainants, being duly sworn on behalf of the complainants, testifies as follows:

Examined by Mr. EMERY:

Q. Mr. Pratt, you reside in Philadelphia?

A. Yes, sir.

Q. And are one of the executors named in the will of George Hayes when he lived here?

A. Yes, sir; in the event of the declination of either Mr. Hayes or Mr. Wells.

Q. And you were appointed by the court in Philadelphia under the name of succeeding executor?

A. Yes, sir.

Q. Do you recollect about the date?

A. Only within two years. The date is stated in here. The letters of administration were issued to me in order to look after this estate in Newark.

36 Q. Who was the previous executor here?

A. Louis E. Wells.

Q. And you were not appointed until after his death?

A. No, sir.

A certified copy of the petition made to the orphans' court of Philadelphia offered in evidence, in reference to the estate of George Hayes, and marked Exhibit 1 for Complainants.

C. N. WILLIAMS, *Examiner.*

Q. Were you one of the incorporators of the Hayes Mechanics' Home?

A. Yes, sir.

Q. It was incorporated shortly after Mr. George Hayes' death?

A. Yes, sir.

Q. Is that the original certificate of incorporation (handing witness paper)?

A. Yes, sir; 1858.

Said certificate of incorporation is offered in evidence and — Exhibit No. 2 for Complainants.

C. N. WILLIAMS, *Examiner.*

Q. This paper, Exhibit 2, is the original charter?
A. Yes, sir.
Q. The charter was afterwards confirmed by act of the legislature?
A. Yes, sir.
Q. And this is a copy of the act (handing paper to witness)?
A. Yes, sir.

This paper is offered in evidence and marked Exhibit No. 3 for Complainants.

C. N. WILLIAMS, *Examiner.*

Q. Have you a printed copy of the constitution and by-laws of the Hayes Mechanics' Home?
37 A. Yes, sir.
Q. (Referring to paper.) This is it, and it also has attached to it a pamphlet called An Appeal for the Hayes Mechanics' Home, hasn't it?
A. Yes, sir; which was published in 1873.

Said paper is offered in evidence and marked Exhibit No. 4 for Complainants.

C. N. WILLIAMS, *Examiner.*

Q. This also contains between the sixth and seventh pages a memorandum of the corporators of the Hayes Mechanics' Home in May, 1885. Is that in your handwriting?
A. Yes, sir.
Q. That is a list of who are now the corporators?
A. Yes, sir.
Q. With their residences?
A. Yes, sir.
Q. These are residents of Philadelphia?
A. Yes, sir.
Q. You are one of the original incorporators?
A. Yes, sir.
Q. I believe that it shows that the object of the corporation was to carry out the will of George Hayes?
A. Yes, sir.
Q. Have you been connected with the Hayes Mechanics' Home since its organization?
A. Yes, sir; with the exception of two years.
Q. Have you any office in connection with it?
A. I am the secretary and treasurer, and have been for a number of years.
Q. So that you are familiar with the condition of the home and its management from the time of its organization?
A. Yes, sir.
Q. I produce here two deeds, the first marked Exhibit 5
38 and the other Exhibit 6; Exhibit 5 is a deed from Mr. Wells to the home of the real estate in Philadelphia, isn't it?
A. Yes, sir.

Q. Made pursuant to the order of the court?

A. Made pursuant to the order of the orphans' court from the executor to the home.

Q. What is number 6?

A. Number 6 is a deed in like manner for the property in the State of Michigan from the executors to the Hayes Mechanics' Home.

Said deeds are offered in evidence and marked respectively Exhibit No. 5 and Exhibit No. 6 for Complainants.

C. N. WILLIAMS, *Examiner.*

Q. Now, at the time of filing this petition, did the home know of the real estate in New Jersey—did the officers of the home, to your knowledge, know of the existence of this real estate in New Jersey?

Objected to.

Q. State as to your own knowledge.

A. I did not, and I am very sure that no one of the officers did.

Q. So far as you know?

A. Yes, sir.

Q. When did you first know of this real estate left by George Hayes in New Jersey?

A. Not until after the death of Jabez W. Hayes.

Q. From whom did you get your information?

A. I either wrote to James C. McDonald for information, and it may have been at the suggestion that such property possibly did exist; yet I may have had my first information from James C. McDonald.

Q. And then you instituted inquiries as to any real estate he had there?

A. Yes, sir.

39 Q. The petition of the home to the orphans' court sets out that there was a balance of about fourteen thousand dollars in Mr. Wells' hands as executor, to be paid over to the home. Was that ever paid over?

A. Yes, sir.

Q. Were you then the treasurer?

A. No, sir; Louis E. Wells was then the treasurer.

Q. How long have you been treasurer?

A. Since the death of Louis E. Wells. Louis E. Wells was removed, I think, about 1873 from the treasurership and Thomas C. Garrett became treasurer and remained treasurer till 1876, but I had been secretary of the board of its managers since 1872.

Q. So that you have been practically connected with the Hayes Mechanics' Home since the date of its organization?

A. Yes, sir.

Q. Now, Mr. Pratt, you may state as shortly as you can, but fully also as you wish, the history of the Hayes Mechanics' Home, giving an account of its situation, assets, and its plans, and using, if you choose, the books to refer to or statements in order to refresh your

memory. When was any money first paid over to the Hayes Mechanics' Home by the executors of the estate?

A. I think in 1864, as by the account book before me. I don't know that there had been any previous.

Q. About what was that amount?

A. $13,789.93.

Q. That was the personal estate, wasn't it?

A. Yes, sir; balance of money in the executor's hands paid over by order of the orphans' court.

Q. Have you before you a statement taken by you from the books showing the accumulation and condition of the fund from 1864 up to May, 1884?

A. Yes, sir; in May, 1864, $13,789.93 was paid over by the executor. A careful statement was made each year at the annual meeting held on the first Monday of May. In 1867 it had reached $29,000, the house and lot, the residence of the deceased, having been
40 sold in that year. Certain estate in Michigan—certain lands, if you choose, in Michigan—were being sold from year to year.

Q. Those were the lands that were conveyed under the order of the court?

A. By the executor; yes, sir. In 1872 it had reached the sum of $35,000.

Q. This was accumulation, I suppose?

A. Yes, sir. In 1873 it had reached $46,000—nearly $47,000—including a legacy received that year.

Q. From whom and about how much?

A. A legacy of Jesse George of $1,000. In 1875 it had increased to nearly $53,000, including a legacy of one thousand dollars under the will of Thomas Sparks. In 1879 it had increased to the sum of $67,667. In 1882 it had increased to the sum of $89,000, nearly $9,500 of which had been a special gift from Mr. Ferdinand J. Dreer. In 1884 it had reached $92,000, in addition to the lot at Belmont, for which we had paid $10,000.

Q. This is all in addition to the lot at Belmont; where is the lot at Belmont?

A. The handsomest lot in Philadelphia; right on the road to the park.

Q. What is the size of the lot or tract?

A. Sixteen and a half acres.

Q. For what purpose was that purchased?

A. For a home.

Q. For the purpose of erecting a building there?

A. Yes, sir; it is adjoining the lands of the Christ Church hospital, on the highest point of ground in that vicinity.

Q. Has the home there commenced the erection of a building for the purpose of a mechanics' home?

A. Yes, sir.

Q. And the building is under contract?

A. Under contract and under way.

Q. When is it to be completed?

A. In November.

41 Q. Just state generally the plans of the building and what the designs and intentions of the managers are in reference to the erection of the buildings.

A. The managers and corporators for several years back have considered the propriety of commencing to build, but waited to have on hand sufficient money to justify their commencement. The gift by Mr. Dreer in 1882 of $9,500 hastened that period, and in May, 1883, a building committee was appointed, with authority to act.

Q. Are they here on the minutes?

A. (Referring to minutes.) Yes, sir; a building committee was appointed—Messrs. Warren Greble and J. E. Mitchell—to procure plans from competent architects and submit to a future meeting. At each meeting since some progress has been made towards that object. Competing architects were applied to a year ago, or nearly a year ago, and Mr. T. P. Chandler, an architect of this city, was appointed to direct the building. Contracts have been entered into for the building since February of this year, although stone to a considerable extent had been prepared during the winter and placed upon the grounds.

Q. From May, 1883, at the time of receiving the bequest from Mr. Dreer, you had determined to proceed to erect the building?

A. Yes, sir.

Q. Now, give me an idea of the general plans the managers have adopted in reference to the character of the buildings which they will erect from this fund and what their purposes are in relation to them.

A. The original plan proposed twenty years ago suggests a central building, to be a memorial to George Hayes, and that auxiliary buildings should be erected in memorial of or as directed by any other future donors. The one for Mr. Dreer is already in progress.

Q. Is that the one they are carrying out now?

A. Yes; others are anticipated to be ordered, but not yet fixed; but we believe that there will be ten auxiliary buildings erected upon a semicircle, the Hayes building being the central.

42 Q. You have here the plans that have been adopted for the Hayes building—the central building?

A. Yes, sir.

Said plan is produced and marked Exhibit No. 7 for Complainants.

C. N. WILLIAMS, *Examiner.*

Q. This plan marked Exhibit No. 7 is the one, I understand, showing the central building, being the Hayes building?

A. Yes, sir.

Q. The one to the left of the picture?

A. The Dreer building, now being erected.

Q. Those two are a long way in the course of construction?

A. Yes, sir.

Q. Now, it is the plan, then, as I understand you, of the managers

upon this large lot of ground to erect the Hayes memorial building in the center and leaving the erection of other buildings to be erected by persons who may be contributors to the fund hereafter?

A. Yes, sir; we think we know already of others that are intended.

Q. Will you please give us the list of the present persons who are managers of this home, with their business and occupation; those of them who are engaged in business and interested in the management?

A. The charter provides at present the corporators shall not exceed fifteen. Application has already been made by resolution of the board to the proper court to increase the number of corporators to fifty, one-half of whom shall be ladies, and that one-half of the managers shall be ladies. The fifteen present corporators are Mr. Ferdinand J. Dreer, not in business; George W. Simmons, of Simmons & Person, manufacturers of jewelry; Thomas C. Garret, out of business; Eli W. Billey (Billey & Company, jewelers);
43 Richard J. Dobbins, building; E. Tracey, watch-case maker; George W. Hill, president American Life Insurance Company; Richard A. Lewis, out of business; J. Estburne Mitchell, manufacturer of limestone; E. Burgess Warren, of Warren, Craig & Co., roofers; George Burnham, president of the Baldwin Locomotive Works; Edward Langstroth, also one of the partners of the Baldwin Locomotive Works; Charles D. Reed, out of business; Charles N. Thorp, watch-case maker, and D. T. Pratt, real-estate agent, the last named being myself.

Q. Now, Mr. Pratt, suppose you give me, in your own way, so that the court may understand, the situation of the property in reference to its adaptability for the purpose indicated by Mr. Hayes' will for a home for aged and indigent mechanics?

A. The building, when erected, will be in one of the most conspicuous locations in the neighborhood of Philadelphia. The property, fronting 1,050 feet on Belmont avenue, affords space for the central building and for ten auxiliary buildings; and if more are needed, provision is made for a double line of buildings. They are now set on a semi-circle.

Q. Belmont avenue is in the neighborhood of Fairmount park?

A. It enters the park; was the main avenue between the two important buildings of the Centennial.

Q. Then this really, as I understand you, is being erected near Fairmo-nt park?

A. Yes, sir; just outside of the park.

Q. And the managers are now prosecuting the building to completion and expect to have it ready for occupation at what time?

A. In November.

Q. Of this year?

A. In November; yes, sir. The managers and corporators have anxiously endeavored to commence the erection of the buildings earlier than this, but have been restrained, waiting to have an amount of money sufficient to justify the building, and mean-
44 while have nursed the money very carefully, so that the original fund of $40,000, in round numbers, received from

George Hayes' estate, with the legacies named and the accretions, has now reached the sum of very nearly a hundred thousand dollars, besides payment for the lot named, which cost ten thousand dollars.

Q. Is there any other institution of that kind in Philadelphia?

A. There is not; of all the institutions here there is no home for mechanics, and we hope to make this a monument to the memory of George Hayes.

Cross-examined by Mr. KEASBEY:

Q. When you say there is no home for mechanics in Philadelphia do you mean to say that all of your charitable institutions exclude mechanics because they are such?

A. Not by any means; but no one specially provides for mechanics.

Q. Are there not many hospitals in the city to which mechanics as well as all other unfortunate people can go?

A. There is no home—there are hospitals; there is an Old Man's home open to all classes.

Q. Do you mean to exclude from the institution which you describe, with its central building and its ten auxiliary buildings, all but mechanics?

A. Necessarily; because the will of George Hayes provides for those and those only.

Q. It provides for your uniting in the support of any other institution if you wish?

A. I will answer that by saying that the discretion invested in the executors was duly exercised before the charter was asked for this home, and they resolved that George Hayes' will would be best carried out by having a separate institution.

Q. What was the total amount of money, in round numbers, received from the Hayes estate, not including interest and excepting legacies?

A. In the neighborhood of $40,000.

45 Q. What amount was received from legacies or gifts of others?

A. Eleven and a half thousand dollars.

Q. Mainly from Mr. Dreer?

A. Yes, sir.

Q. In your appeal made in 1873 you invited legacies and gifts from all quarters, did you not?

A. Yes, sir.

Q. And when you speak of the ten memorial buildings proposed do you mean that they are to be erected in memorial of those who shall make such gifts or legacies?

A. The entire collection of buildings is to be known as the Hayes Mechanics' Home. The auxiliary buildings will, by inscription, be a memorial to their donors; we provide for that on each building.

Q. How many years elapsed from the day of Mr. Hayes' death

to the laying of the first stone of the building which you describe?

A. Twenty-seven years, the delay being attributed to (interrupted)——

Q. You have already stated the causes?

A. Yes, sir.

Q. You were appointed executor in 1884 solely for the purpose of seeking to recover the proceeds of this real estate in Newark, were you not?

Yes, sir; it became necessary.

Q. Were you solely appointed for that purpose?

Objected to, because the law directs what he is to do.

Q. Answer the question.

A. With that end in view; yes, sir.

Q. Was there any other part of the estate left unadministered which required an executor?

A. None.

Q. Then have you any other duty as executor except simply to sue for and recover this New Jersey property?

46 A. No, sir; under the residuary clause of the will, I supposed the Hayes Mechanics' Home could itself pursue that fund, but was advised that I, as executor, should claim it.

Redirect by Mr. EMERY:

Q. You knew of no other property belonging to the estate which had not already been administered, did you, than this?

A. I did not.

Q. And don't know now of any other?

A. I do not know now of any other.

Q. Do you know of Mr. Henry Hayes?

A. Yes, sir.

Q. The present defendant?

A. Yes, sir.

Q. Was application made on his behalf by any one to you in reference to allowing the proceeds of the New Jersey property to be diverted from the Hayes Mechanics' Home?

A. On the 28th of May, 1884, I was called upon by Bishop Starkey, of Newark, who introduced himself, saying he had called, at the instance of Henry Hayes, to obtain the consent of the Hayes Mechanics' Home that the fund in Newark might be used for the St. Barnabas hospital. I told him such diversion was impossible, could not be entertained for a moment; that we should fail in our duty under the will of George Hayes to permit any diversion, and that we should certainly oppose, if we had to carry it to the Supreme Court of the United States, any such diversion.

Q. At that time did you understand that the fund had been paid over to the St. Barnabas hospital?

A. I might almost say in positive words that it had not been paid over, because the object of the conversation was to ask our consent to its being paid over.

Q. Did you know at that time that it had been paid over?
A. I did not know until I received a copy of his answer in this suit.

47 Q. That was the first knowledge you had that the fund was not in Henry Hayes' hands?
A. Yes, sir.
Q. You didn't consent to that payment over?
A. No, sir.
Q. Had you any correspondence with Mr. Henry Hayes in relation to the claim for this money on behalf of the home?
A. Yes, sir.
Q. Will you produce that correspondence?
A. Yes, sir; we notified Henry Hayes——
Q. When did your correspondence with Henry Hayes commence?
A. On the 15th of November, 1882, I addressed him a letter.
Q. Have you a copy of the letter there with you?
A. Yes, sir.

Copy letter produced and offered in evidence and marked Exhibit No. 8 for Complainants.

C. W. WILLIAMS, *Examiner.*

Q. Did you get a reply from that?
A. Yes, sir; there is Mr. Henry Hayes' letter of November 22d. This is the original letter.

Said letter is offered in evidence and marked Exhibit No. 9 for Complainants.

C. N. WILLIAMS, *Examiner.*

Q. Then did you write him?
A. Yes, sir; I wrote to him in reply on the 24th of November.
Q. And have you a copy of your reply?
A. Yes, sir.

Copy of reply produced and marked Exhibit No. 10 for Complainants.

C. N. WILLIAMS, *Examiner.*

48 Q. What further?
A. I have no letter from him till one of the 25th of June, 1883.
Q. You mean after November, 1882?
A. Yes, sir; 25th June. I now produce that.

Said letter offered in evidence and marked Exhibit No. 11 for Complainants.

C. N. WILLIAMS, *Examiner.*

Q. Did you have any further correspondence with him directly after that?
A. Yes, sir.
Q. Will you please have copies made of your correspondence with

Mr. Henry Hayes so far as appears from your letter book, and with your certificate that they are copies?

A. Yes, sir; Mr. Jabez W. Hayes, in 1876, in company with Mr. Nichols, called upon me, having heard of the death of Louis E. Wells, and anxious to know the state of his accounts. We had a long conference, in which the affairs of the home up to that moment were clearly exhibited to him, and I think at that moment he was fully informed of everything that had been done and in contemplation of being done. He said nothing to me about any property in Newark. We called together upon the person that then represented the Wells estate and had him to explain the situation of Louis E. Wells' own estate.

Q. This paper now shown you is a statement showing the increase of the assets of the home from 1864 to 1884?

A. Yes, sir.

Q. Which you refer to in your examination?

A. Yes, sir.

Q. Taken from your books, and is correct?

A. Yes, sir.

Said paper is offered in evidence and marked Exhibit No. 12 for Complainants.

C. N. WILLIAMS, *Examiner.*

49 United States Circuit Court for the District of New Jersey.

DUNDAS T. PRATT, Executor of George Hayes, Deceased, and The Hayes Mechanics' Home, Complainants,
against
HENRY HAYES, Administrator of George Hayes, Deceased, Defendant.

Examination of witnesses on the part of the defendant in the above-stated cause, taken on the 17th day of July, 1885, before C. N. N. Williams, special examiner named by consent of the parties, at his office, 721 Broad street, in the city of Newark.

Present: A. Q. Keasbey, Esq., solicitor for the defendant; John R. Emery, Esq., solicitor for complainant.

HENRY HAYES, a witness produced on the part of the defendant, being duly sworn, says:

Examined by Mr. KEASBEY:

Q. Where do you live?

A. My legal residence is Morristown, New Jersey, at present.

Q. Where are you engaged in business?

A. Newark and New York.

Q. Have you for a long time been a resident of the city of Newark?

50 A. All my life until last year, and now am half the year.

Q. Are you one of the sons of Jabez W. Hayes, deceased, who was the executor of George Hayes?

A. I am.

Q. Was George Hayes the brother of Jabez W. Hayes and your uncle?

A. Yes, sir.

Q. Did you know him?

A. I did.

Q. Where did he live in the early part of his life?

A. In Newark.

Q. Was he born in Newark?

A. He was.

Q. And how long did he live there?

A. I am unable to say, sir, from memory.

Q. Did he live there until he moved to Philadelphia, and went in business there?

A. He did.

Q. Was he engaged in business at Newark?

A. He was—manufacturing jewelry.

Q. In what location?

A. 916 Broad street—the present number.

Q. Was he a married man when he was in the city of Newark?

A. He was not.

Q. Was that location—that 916 Broad street—a part of the homestead property of the family?

A. Yes, sir.

Q. Who owned it before the time of your father and uncle?

A. Their father, Moses Hayes, who inherited it from his father and two or three generations previous.

Q. Of what did that property—the whole of it—consist?

A. Real estate on Broad street.

Q. It consisted of a lot thirty-eight feet front on Broad street?

51 A. The Hayes estate consisted of more than that; it consisted of about ninety feet or more on Broad street by one hundred and eighty-seven deep.

Q. Had your grandfather lived there?

A. He had.

Q. Did George Hayes, your uncle, inherit or become possessed of part of that property?

A. Yes, sir; he inherited part of it.

Q. How much of it?

A. He inherited twelve feet front by the whole depth.

Q. Did he become possessed afterwards through purchase of the other heirs of the rear portion of the property?

A. He became possessed of the lot in the rear—of the balance of the property—I am not certain whether by purchase or by gift; it was by deed from the other heirs.

Q. Did he own that property at the time he was engaged in business in Newark?

A. He did.

Q. Did he continue to own it up to the time of his death?

A. He did.

Q. Are you familiar with the terms of the will of George Hayes, made in Philadelphia, generally?

A. Generally; yes, sir.

Q. Do you know the fact that your father, Jabez W. Hayes, was appointed one of the executors of that will?

A. I do.

Q. Did he take upon himself, in any way, the burden of the execution of that will, so far as related to the property in Philadelphia or other property of the testator?

A. He entirely declined to take any part in it.

By Mr. EMERY: You are speaking of your own knowledge as to what was done in Philadelphia?

The WITNESS: Yes, sir.

Mr. EMERY: Not as to what was done in Philadelphia from any statements made by your father?

Mr. KEASBEY (interrupting) to Mr. Emery: Make your objection, Mr. Emery.

52 Mr. EMERY: Objected to, unless the witness speaks of his own knowledge as to what was done in Philadelphia, and not from any statements made by his father.

Q. Do you know, as a matter of fact, that your father refused to undertake the execution of the will in Philadelphia and declined to take any part in the administration of the property there?

A. I do know it.

Q. Did he prove the will in this State?

A. He did.

Q. As executor of the will in this State, did he take possession and have control of this real estate which belonged to George Hayes?

A. He did.

Q. Was there to your knowledge any other estate of George Hayes to be administered in this State except this real estate?

A. Nothing.

Q. Who received, during the time that has elapsed from the death of George Hayes until the sale of the property, the rents and profits of that property of George Hayes and kept the custody of those rents and the real estate itself?

A. My father, as executor.

Q. When did your father die?

A. In 1882.

Q. Do you know whether the family of George Hayes, in Philadelphia, and Mr. Wells, his executor, were aware of the fact that he owned this real estate in New Jersey?

Objected to as irrelevant.

A. Mr. Wells told me so himself.

Q. When did he tell you about it?

A. On one or two occasions on my visit to Philadelphia.

By Mr. EMERY: Told you that George Hayes owned it?

53 The WITNESS: He was aware that George Hayes owned this real estate in Newark.

Q. To what period of time are you now referring?

A. About 1851 and 1853; about that time.

Q. Had you conversations as to what was being done with the property; who had charge of it?

A. In Newark?

Q. Yes, sir.

A. No, sir.

Q. Did he know who had charge of this property?

A. Oh, fully.

Q. How do you know that he was fully aware that your father had charge of this real estate belonging to George Hayes?

Conversation objected to.

Q. How do you know that Mr. Wells. in Philadelphia, knew that your father, as executor here, had this property in charge and was taking care of it?

A. The conversation regarding the whole of the estate; I was asked to be one of the appraisers of the property in their factory at my uncle's death; that is when we had the conversation; two years afterwards, in talking with Mr. Dreer, my uncle's partner, matters were generally referred to and fixed then. Mr. Dreer has looked at the property to my certain knowledge.

Q. How long ago was he looking at the property?

A. During five years.

Q. In this early conversation was the subject of the character and situation of this property in Newark in your father's hands discussed and well understood?

A. Entirely so; entirely understood.

Q. Is there any doubt at all, Mr. Hayes, that Mr. Wells, the executor of your uncle, and Mr. Dreer, his former partner, were, shortly after the death of George Hayes, fully aware of this real estate belonging to him in New Jersey, and that it was being taken charge of by your father?

54 A. There is no doubt whatever.

Q. You know it is a fact, in your own knowledge, derived from interviews with them?

Conversation objected to.

A. Yes, sir.

Q. Did you ever know of any objection on their part to your father, as executor, taking charge of this property and receiving the rents of it?

A. They never objected; Mr. Wells told me himself: "You take care of this; let the old gentleman take that property in Newark, I will take care of the property here; we don't care anything about that."

Q. Do you know of any action on the part of your father with

reference to the disposition of the proceeds of that property when sold in pursuance of the trust contained in the will?

Objected to for the reason that the property was not sold until after his father's death.

A. I know of no action.

Q. I mean any action taken with reference to the proceeds of the property when it should be sold?

A. There was no action taken, sir.

Q. You don't understand what I understand by action. (Paper handed witness.) Were any steps taken by him with reference to any future action?

A. He consulted counsel here as to their view.

Objected to as irrelevant.

Q. As to their advice as to what?

A. Whether he could devote the proceeds of this property to a charity of the nature stated in my uncle's will.

Q. Do you know whether he had any particular charity in view to which he referred counsel in that inquiry?

55 Mr. EMERY: Do you know of your own knowledge?
Mr. KEASBEY: Mr. Hayes speaks of his father's action.

A. Well, he told me about it.

These statements of the deceased are objected to on that particular point.

Q. What did he tell you about it?

A. That he desired to have that used by the trustees of the Hospital of Saint Barnabas in support of a bed or beds for the use of aged and infirm American mechanics, in accordance with his brother's will.

Q. Did he consult counsel on that subject?

A. He did.

Q. What counsel did he consult?

A. He consulted Mr. Cortlandt Parker and he consulted Mr. Keasbey.

Q. Have you in your hands the reply of Mr. Keasbey and Mr. Parker to those inquiries?

A. I have; yes, sir.

Q. Will you read them so that the examiner can take them down?

Objected to.

A. (Reading from paper:)

"NEWARK, *April 23d*, 1870.

"Mr. Charles Hayes.

"DEAR SIR: George Hayes, by his will dated June 16, 1855, devised the residue of his estate to his executors, in trust, to appropriate and use the principal or income thereof for the purpose of

founding or supporting or uniting in the support of any institution that may then be founded to furnish a retreat and home for disabled or aged and infirm and deserving American mechanics. You ask me whether, under this provision, the executors would be authorized to provide a permanent bed in St. Barnabas hospital for such
56 mechanics. I understand that part of the estate has already been devoted to the general purpose of the devise- in Pennsylvania, and that the validity of the provision is not disputed. Assuming it to be valid, I answer your question in the affirmative. The manifest intention of the testator was to devote his charity to the relief of disabled and infirm mechanics. He was careful to avoid the difficulty of the inadequacy of his gift to found such an institution and provided that it might be bestowed in uniting in the support of any institution founded for the purpose he had at heart. St. Barnabas hospital is eminently such an institution. It is not confined to mechanics, but it embraces them. It is strictly one founded to furnish a retreat and home for them as well as for others—in fact, it will probably be found that a large proportion of those whom it relieves and shelters are member- of this class.

"I have no hesitation in saying that the executors may, in their discretion, unite in its support to the extent they may deem judicious.

"I would recommend that the support they give should be distinctly and formally applied to the special purpose of the will, namely, to the relief of disabled, aged, or infirm American mechanics.

"Yours truly, "A. Q. KEASBEY."

The witness, continuing, says: Endorsed upon the opinion is the following: "I have examined the will of George Hayes, Esq., referred to in the within letter, and the charter of St. Barnabas hospital, in Newark, New Jersey, and concur in the views expressed by Mr. Keasbey. The institution mentioned has within its scope the furnishing a retreat and home for disabled or aged and infirm and deserving American mechanics. The will expressly authorizes the employment of any part of the testator's residuary estate, so as to unite in the support of such an institution. I do not think
57 there can be any doubt of the lawfulness of the devotion of part of the property left, especially that situate in New Jersey, to this laudable object.

"Newark, Feb. 14, 1876.

"CORTLANDT PARKER."

(Witness continuing:) Mr. Keasbey, I would like to say that my memory is at fault in some dates in the prior question. You asked me when I had conversations in Philadelphia. I told you in 1851 and 1853. It was in—I can't tell you the years now, certain. I know that is wrong.

Q. Can you give about the time?

A. (Witness looks at answer and says:) These are the dates instead: 1857 and 1859.

Q. Why didn't Mr. Hayes, your father, carry out that intention in pursuance of that advice?

Objected to as the opinion of the witness and calling for hearsay.

A. I am unable to say, sir.

Q. Was the property sold and turned into money during his lifetime?

A. It was not. Now, if it is proper for me to express an opinion why he didn't do it, he was away from Newark ten years prior to his death.

Q. Were you appointed administrator here with the will annexed of your father?

A. I was.

A certified copy of the appointment of Mr. Hayes as administrator is offered in evidence and marked Exhibit No. 1 for Defendant; admitted by counsel for complainants.

Q. Did you, as such administrator, turn that property into money?

A. I did.

Q. Did you obtain possession, as administrator, of the proceeds of that property and the accumulations of rent or interest?

58 A. I did.

Q. Have you settled your account as administrator in the surrogate's office of the county of Essex?

A. I have.

Q. Do you remember what was the net balance that you had in your hands belonging to the estate of George Hayes realized out of this property in New Jersey?

A. (Witness being shown paper.) It is about five thousand dollars.

Q. The figures stated in the answer are $5,153.27. Is that according to your recollection and belief?

A. Yes, sir.

Q. What did you do with that balance?

A. I paid it to the treasurer of the Hospital of Saint Barnabas, Newark.

Q. Did you make a communication to the trustees of that hospital?

A. I did.

Q. (Paper being shown witness.) Is that the communication which you made on the 4th March, 1884?

A. Yes, sir.

The following is a copy of the communication above referred to:

"NEWARK, *March* 4, 1884.

"To the trustees of the Hospital of St. Barnabas.

"GENTLEMEN: The late George Hayes bequeathed his residuary estate to his executors in trust to appropriate and use the principal and income thereof 'for the purpose of founding and supporting or

uniting in the support of any institution that may be founded to furnish a retreat and home for disabled or aged and infirm and deserving American mechanics.' He died in Philadelphia, and constituted as his executors Dr. Wells, of that place, and his brother, Jabez W. Hayes, late of the city of Newark. In the event of the death of either or both of them he appointed Dundas Pratt to the same office. A portion of his estate has been administered
59 by Dr. Wells and Mr. Pratt in Philadelphia and a portion by his brother, J. W. Hayes, here. On the death of my father, J. W. Hayes, I was constituted administrator, with the will annexed, here. After settling the estate and rendering an account to the orphans' court I find that I have five thousand two hundred and seventeen dollars ($5,317) remaining.

"My father, in his lifetime, being desirous of transferring to your hospital, to be applied for the purposes in the will mentioned, whatever balance should remain in his hands after satisfying all legal claims, consulted counsel as to whether he might lawfully make that disposal of the fund. Both Mr. Cortlandt Parker and Mr. A. Q. Keasbey gave him their written opinions that he might lawfully apply it to that object. He died, however, before doing so.

"Being desirous of carrying out his wishes in the matter, I now desire, with the sanction of the court of chancery, to transfer this money to the Hospital of St. Barnabas, to be solely and exclusively applied by it 'for the purpose of furnishing a retreat and home for disabled or aged or infirm and deserving American mechanics.'

"If you are willing to take the fund and devote it to that object, I will transfer it to you, if the chancellor shall so direct. I deem it proper to take this course, because Mr. Pratt, the acting executor of the estate of the late George Hayes in Philadelphia, is of opinion that it is my duty to transfer this money to him, and calls upon me to do so. Whatever disposition may, therefore, be made of it, I desire to make under legal sanction, my own object being to carry out the instructions of the testator as expressed in his will. Please inform me at your earliest convenience whether you will consent to receive the fund and apply it for the purpose above stated.

"Yours resp., HENRY HAYES."

C. N. WILLIAMS, *Examiner.*

Q. Did the trustees of the hospital accept the fund?

A. They did.

60 Q. You speak in your communication of obtaining the direction of the court of chancery. Was that preliminary afterwards waived by you on receiving an indemnity from the hospital against any demands that might be made and maintained by the executors in Philadelphia?

A. It was waived.

Q. Have you thereupon, upon receiving such indemnity, paid over the fund to the treasurer of the Hospitial of Saint Barnabas?

A. I have.

Q. Do you know that the Hospital of Saint Barnabas has lately been enlarged by the erection of a new and substantial building?

A. I do.

Q. Are you yourself one of the trustees of Saint Barnabas hospital?

A. I am not.

Q. Have you received a communication from the trustees accepting this fund and agreeing to devote it to the purposes mentioned?

A. I have.

Q. Are you, as administrator of this will, satisfied that the fund so transferred will be faithfully applied to the purposes mentioned in the will?

Objected to as a matter of opinion of the witness.

A. I am.

Cross-examined by Mr. EMERY:

Q. Can you tell from memory, Mr. Hayes, when this property was sold—about the time?

A. In Newark?

Q. Yes, sir.

A. In 1883, I think.

Q. Was that property all property which stood at the time of the sale in the title individually of George Hayes or of his estate, or was some of it real estate which stood in the name of George Hayes' father?

61 A. It stood—the large portion was in his name, and there was an undivided quarter in his father's old homestead.

Q. And was that all sold at the same time?

A. His portion was sold, and his special twelve feet, at the same auction.

Q. Then a portion of this property which George Hayes owned came from his father's estate and had not been divided between himself and the other heirs during his lifetime?

A. I think not.

Q. And was not divided after his death either, up to the time of the sale?

A. No, sir.

Q. Who purchased the other quarter interest—some of the heirs?

A. Charles Hayes.

Q. Who is Charles Hayes?

A. My brother.

Q. You sold and he purchased?

A. He purchased.

Q. What was the sale?

A. Public sale.

Q. Was Charles Hayes the owner of any other interest?

A. He was not.

Q. Was there any other interest on that particular portion of property at that sale?

A. I think there was no other bidder.

Q. How much did he bid?

A. Six hundred dollars.

Q. That was a quarter interest?
A. Yes, sir.
Q. Will you please tell me what property that is?
A. It is 916 Broad street.
Q. And what is the size of the lot?
A. 26 feet by about 160 feet.
Q. Then on that valuation that would make the whole property worth $2,400, wouldn't it?
A. Yes, sir.
62 Q. Between what streets, crossing Broad street, is that property located?
A. Green and Franklin.
Q. That is a block or two below the city hall?
A. It is on the east side of Broad street.
Q. It is a little over a hundred dollars a front foot?
A. Well, it would be scarcely a hundred dollars a front foot.
Q. What is your opinion about that as a fair value for property there without any buildings on whatever?

Objected to as irrelevant to the issues in this case.

A. Under the circumstances it is enough.
Q. Just answer my question. What is your opinion as to the value per front foot of property in that part of Broad street without any improvements whatever on the property?
A. For the six and a half feet which was there sold a hundred dollars is all it was worth.
Q. Six and a half feet?
A. His interest was equivalent to six and a half feet.
Q. That was a quarter interest in the whole property. Now, I ask you what, in your opinion, was the fair value of that lot of twenty-six feet without any improvements on it. What was the value of that lot of twenty-six feet at the time of the sale?
A. I think the value of that lot would be (interrupted)——
Q. The whole lot?
A. The whole lot; I should think it was worth at the most two hundred dollars a foot. I would decline to give two hundred myself.
Q. That was sold some time in 1883, wasn't it?
A. Yes, sir.
Q. Didn't Mr. Pratt make application to you in reference to attending that sale?
A. I don't remember whether he did or not, sir.
Q. Will you please look at this paper marked Exhibit 11 for Complainant, dated June 25th, 1883, and state whether you recognize that?
63 A. I wrote that letter; yes, sir.
Q. That was in reply to a letter from Mr. Pratt in reference to the sale?
A. It probably was.
Q. Just read that letter.
A. (Witness reads:)

"NEWARK, NEW JERSEY, *June 25th*, 1883.

"D. T. Pratt, Esq.

"DEAR SIR: I do not see that you can be of any assistance in the matter of the sale. I have not yet considered what disposition to make of the money, but, of course, it shall be nothing but a legal one. I will not dispose of it in any way without giving you ample opportunity to show that the Hayes home is the only institution or person entitled to it, even if I should be of a contrary opinion.

"Yours truly, HENRY HAYES."

Q. Mr. Pratt didn't attend that sale?

A. I don't know Mr. Pratt; I don't know whether he was there or not.

Q. Where did the sale take place?

A. On Broad street in front of the property.

Q. Who were there?

A. About fifty people.

Q. You don't know Mr. Pratt?

A. I do not, sir.

Q. How soon after the sale did you get the money?

A. Within a few days.

Q. Now, before paying this money over, did you take a mortgage from the hospital?

A. I can't remember now. I left it in my counsel's hands.

Q. Who was your counsel?

A. Judge Stevens.

Q. But in 1884?

A. He was my consulting counsel in the details of the papers.

64 Q. Well, this was after the settlement. Wasn't Mr. Keasbey your counsel?

By Mr. KEASBEY: I never was his counsel in any way. I never had anything to do at all in the matter with Mr. Hayes.

Q. I asked you whether you took a mortgage from the Hospital of St. Barnabas on paying them this money.

A. I believe there was.

Q. A mortgage for $5,153.27?

A. Yes, sir.

Q. I read this clause from a copy of the mortgage, and see whether you have any recollection of it. After reciting the will of George Hayes: "Therefore, if it shall be adjudged by any court that payment to the St. Barnabas hospital ought not to have been made or is unlawful, or if Henry Hayes has incurred any liability, or if on such adjudication the hospital shall immediately pay to Henry Hayes the full amount for which it is adjudicated said Hayes may be liable, including interest, and if the hospital shall pay to Henry Hayes all costs and charges, and also if the said hospital shall fully indemnify said Hayes, etc., then these presents shall be void." You took that mortgage to indemnify you for all lawful charges and expenses, did you not?

A. Yes, sir.

Q. What was your reason for doing it?

A. The reason that Mr. Pratt had said shortly before I sold the property that he felt I ought to pay it to him.

Q. You didn't notify Mr. Pratt of the payment of the money over after getting this, I suppose?

A. I don't think that I did. I think not.

Q. You concluded to pay it over on receiving this indemnity, instead of applying to the court for directions, did you not?

A. Yes, sir.

Q. Was that on the advice of counsel?

65 A. Yes, sir.

Q. What counsel advised you to take a bond and mortgage of indemnity?

A. Judge Stevens.

Q. You are positive of that?

A. He is my own counsel.

Q. Did you consult counsel as to that course?

A. I did consult him, and he had this mortgage drawn so as to protect me, and therefore by his advice I did it.

Q. This mortgage, as you understand it, was a first mortgage, wasn't it, when you took it?

A. I think I was told that part of the property was first mortgage.

Q. It was a first mortgage on part of the property?

A. Yes, sir.

Q. Now, you have stated that the hospital has lately been extended. Do you know whether, for the purpose of making that extension, they have given a new mortgage on that property?

A. I don't know of that.

Q. You don't think that they have given a mortgage for $15,000 to the Security savings bank?

A. I do not.

Q. Please explain how it was that this mortgage you took May 9th was cancelled and a new mortgage given you for the same amount subsequent to the mortgage given to the Security savings bank. I ask you if you can explain how it was done; how you gave up that first mortgage and put it after a $15,000 second mortgage.

A. Probably for the purpose that if they should obtain this money—and I don't know that they did obtain the money; I don't know yet that they did, but it was for the purpose, I think, of obtaining money; and, if I mistake not, the trustees passed a resolution setting aside certain securities that should be held as reserved for the payment of the amount that I had paid them.

Q. When, in this letter of June 25th, 1883, you said to Mr.

66 Pratt, "I will not dispose of it in any way without giving you ample opportunity to show that the Hayes home is the only institution or person entitled to it, even if I should be of a contrary opinion," did you in that refer to an opportunity to show

it by the decision of the court so as to have it decided between you in chancery?

A. I did not limit myself in my own opinion—whether it should be the opinion of my counsel or the opinion of the court.

Q. I asked you what you meant by that letter.

A. In my opinion.

Q. At that time did you not expect that the question then would be settled by the court, and changed your mind after and settled it yourself, as you thought they would decide it?

A. No, sir; but that I would view his claims and come to my own decision.

Q. You would decide it yourself, and then dispose of it as you thought it should be used, and then let the court set aside your decision if it was wrong?

A. That was my view.

Q. But you intended to take the risk of your decision being right, without application to the court?

A. Certainly; that is what I felt all along.

Q. You didn't care about having the decision of the court on that?

A. Not at that time.

Q. The Saint Barnabas hospital is an institution under the control of the authorities of the Episcopal church to a certain extent, is it not?

A. Yes, sir.

Q. Which are mentioned by their charter for that purpose?

A. Yes, sir.

Q. Supported by the Episcopal church in Newark?

A. Yes, sir; and other people.

Q. Have you a copy of the charter?

A. I think I have; but not here.

Q. Do you remember who the trustees of the Saint Barnabas hospital were at the time you paid over the money?

67 A. No, sir.

Q. Do you know any of them?

A. Yes, sir.

Q. Just state those whom you recollect.

A. Rev. H. S. Bishop, Rev. Mr. Stansbury, J. B. Ward, Henry G. Darcy, John D. Toppin; I don't recall to mind any others.

Q. Was Mr. Keasbey a trustee in or in any way connected with it?

A. I don't know.

Q. Where did you get this letter that you have read—a letter to Mr. Charles Hayes, wasn't it?

A. Yes, sir; he wrote it at my request.

Q. This letter dated Newark, April 23rd, 1870, addressed to Mr. Charles Hayes, which you produced; where did you get that from?

A. I found it amongst my father's papers, I think.

Q. This is addressed to Mr. Charles Hayes; who is he?

A. That is my brother.

Q. And at this time was Mr. Charles Hayes one of the trustees of the St. Barnabas hospital?

A. I don't know whether he was or not.

Q. Was he ever a trustee of that hospital, so far as you know?

A. I think he was.

Q. I would like to know about those mortgages. I suppose you are able to state, as a matter of fact, that you cancelled your first mortgage and took a second mortgage?

A. I recollect now that I asked Judge Stevens to attend to that.

Q. Will you be good enough to produce those mortgages, if you have them? You may send them to Mr. Keasbey and they may be marked.

A. I will.

Q. Have you for a long time been interested in the St. Barnabas hospital in any way?

A. No, sir.

Q. Never taken any special interest in it?

68 A. No, sir; I have only contributed with my parish.

Q. Now, before addressing this communication to them had you made any inquiries as to their charter or their by-laws?

A. I had for myself in a general way.

Q. What do you mean by the expression "in a general way"?

A. I read them over.

Q. Who drew up this application to the trustees dated March 4th, 1882?

A. That is my brother's.

Q. Which brother?

A. Charles Hayes.

Q. Is that your signature at the bottom of it—did you sign that?

A. No, sir; I did not. I authorized it signed.

Q. Who signed it?

A. My brother Charles.

Q. When did you authorize it signed?

A. The day it was sent and I presume the day it was written.

Q. Did you read it over after it was written?

A. I did.

Q. Was it in this shape when you authorized it to be signed?

A. In the shape of the paper, you mean?

Q. Yes, sir.

A. I don't recollect about that.

Q. Those identical words were written to the trustees?

A. Yes, sir.

Q. And you read them before they went to the trustees?

A. Yes, sir.

Q. And directed your brother to sign your name?

A. I don't know.

Q. Why didn't you sign your own name?

A. Perhaps I did. I can't tell but what I did sign it. I don't know whether that is the original, and I can't tell whether I signed it or authorized it to be signed.

69 Q. What was your age when your uncle moved to Philadelphia, Mr. Hayes—about how old were you?

A. I should say ten years, from memory.

Q. Do you recollect the year he moved there?

A. I do not.

Q. And you were born about 1831, then?

A. 1834, sir.

Q. You don't recollect that your uncle move- there in 1841?

A. I don't remember, sir; it may have been then.

Q. Do you recollect anything about his business while you were at the age of seven years, or is all this derived from information in the family of your father?

A. Only that he used to visit us very frequently, and talk about his shop there and about his place of business.

Redirect examination by Mr. KEASBEY:

Q. Was the undivided fourth interest in the Broad-street lot, owned by your uncle, sold separately as an undivided fourth interest?

A. Yes, sir.

Q. There was not a sale of the entire Broad-street lot of twenty-six feet, but it was a sale of one-fourth interest, was it not?

A. Yes, sir; the advertisements were so.

Q. Was it advertised by you duly as executor?

A. Advertised by the papers, and posters in public places. I would say, Mr. Keasbey, that some of the neighborhood who had the property in view were present, and I know had been looking at the property, and I think even trying to negotiate at private sale. They wouldn't bid enough, and I placed it at public auction. I recollect now parties from New York were present. Mr. John H. Kase was present.

Q. It was then sold by you, as administrator with the will annexed, at public sale in due course of your administrator-?

A. Yes, sir.

Q. And struck off to the highest bidder?

A. Yes, sir.

70 Recross-examination:

Q. If the whole lot had been sold as a lot, then a quarter interest of the estate would probably have been larger, wouldn't it, if it had been sold as one lot?

A. In all probability; yes, sir.

Q. Was that your idea about the way in which the values would be changed by the sale?

A. I didn't have any idea of changing the values. I know that my father had bought up all the remaining interests except this.

Q. Your father had bought all the interest of the brothers and sisters, and that left only the George Hayes interest outstanding?

A. Yes, sir.

Q. That had never been divided?

A. No, sir.

Q. Then as it really stood three-quarters belonged to your father and one-quarter to George Hayes, didn't it?

A. Yes, sir.

Q. Then the sale was made, and Charles Hayes, one of your brothers, bought the quarter interest?

A. Yes, sir.

Q. Who pays the charges for the other; in whose name is that?

A. Jabez W. Hayes.

Q. That has not been divided yet?

A. No, sir.

Q. Have the heirs any interest in this quarter share purchased by Mr. Charles Hayes? Has he made any transfer or any declaration in the quarter he bought?

A. He owns that yet. He made no disposition of his quarter interest.

Q. Is there any understanding or arrangement about that quarter interest he bought with the other heirs?

A. Not the slightest.

Q. If this property would have sold for more as a lot, why didn't you, as administrator of George Hayes, attempt to secure a
71 larger price by having the property sold under partition proceedings, so that the quarter interest in the estate would realize more?

Objected to as irrelevant.

A. I didn't suppose I had any power to sell the other property. I wasn't ready to sell it.

Q. You were not ready?

A. No, sir; I wanted to know what their price was.

Q. What was their price?

Objected to.

Q. Haven't they asked five thousand dollars for it?

A. They have never expressed any opinion to me whatever.

Q. And you have no idea?

A. No, sir; I am the sole executor.

Q. You are sole executor of your father's estate?

A. Yes, sir.

Q. Have you had any offers for it since you have been executor?

Objected to.

A. Not an offer.

Q. What have you had? What do you mean?

A. Not any offer.

CHARLES HAYES produced and sworn on behalf of defendant.

Examined by Mr. KEASBEY:

Q. Are you the son of Jabez W. Hayes, formerly executor of George Hayes?

A. I am.

Q. How old are you?

A. I am forty-nine.
Q. Do you remember George Hayes?
A. I do.
72 Q. Can you remember when he lived in Newark?
A. I cannot.
Q. Do you know Mr. Wells; have you met Mr. Wells, executor of George Hayes?
A. I did know him, but he is dead.
Q. During his lifetime and after the death of George Hayes, have you heard him speak of property in Newark belonging to George Hayes?
A. I have.
Q. What was the substance of his treatment of that property by your father?

Objected to.

A. That he would take care of the Philadelphia and my father, Jabez, would take care of the New Jersey; he would not qualify.
Q. Do you not know from his own statements that he was aware of the existence of this property in New Jersey?
A. Without any definite dates; yes, sir.
Q. When did Mr. Wells die; do you know?
A. I do not.
Q. Do you know that he did know it in his lifetime and speak of it?
A. Yes, sir.
Q. Have you heard the statements of your brother, Henry Hayes, as to the nature and disposition of the real estate on Broad street, of part of which George Hayes died seized?
A. I heard it; yes, sir.
Q. Do his statements correspond with your recollection and knowledge of the subject?
A. Yes, sir.
Q. Did you purchase that property at the administrator's sale?
A. I did.
Q. At the prices mentioned by your brother?
A. Yes, sir; I think he mentioned the prices—$3,650 and $600.
73 Q. Did you buy it at public sale?
A. I was not there. I ordered it to be bought for me, Mr. Keasbey. I gave my figures to purchase.
Q. Do you know the fact that your father had in contemplation the disposition of the proceeds of that property by uniting in the support of St. Barnabas hospital?
A. I do.
Q. How do you know that?
A. By his own words.

Objected to.

Q. Did you receive a letter from Mr. Keasbey, which has been

offered in evidence, dated March 23, 1870, respecting that suggestion as to the disposition of the property?

A. I did; yes, sir.

Q. How did you happen to receive that letter from Mr. Keasbey?

A. I made this request for my brother.

Q. Did you consult Mr. Keasbey and request his opinion?

A. I visited Mr. Keasbey in addition to writing him.

Q. Was that with your father's knowledge and approbation?

A. Yes, sir.

Q. Did you deliver that letter to your father at the time it was received?

A. My father knew the contents of this about that time.

Q. After that time it appears to have been submitted to Mr. Parker for his opinion. Do you remember how that was?

A. If I remember right, Mr. Keasbey, my father wanted additional counsel, and it was suggested that Mr. Parker be requested to look at it; and this is the result.

Q. Do you know whether your father at any time changed during his life his wish and intention as to the disposition of that money?

Objected to.

74 A. It was always the one thing—to have this fund used in New Jersey.

Q. And how with reference to the St. Barnabas hospital; what was his desire with respect to that; did it continue to be his desire up to his death?

A. Yes, sir.

Q. Was he somewhat disabled before his death?

A. Yes, sir.

Q. How long?

A. Quite a number of years. I can't say exactly. He failed gradually.

Q. What was his age?

A. Eighty-one years old.

Q. During the latter part of his life was he much in Newark?

A. Not so much.

Q. He lived in Tennessee a good deal, did he not?

A. Yes, sir.

Q. Are you one of the trustees of the St. Barnabas hospital?

A. I am not.

Q. Were you ever one?

A. I was.

Q. How long?

A. I can't give the exact date of my resignation. I was one of the original incorporators. Up to my sickness, which was four years ago.

Q. You were not one of the trustees at the time this fund was paid over to the hospital?

A. No, sir.

Q. You say you were one of the corporators. Will you look at

the second section of the act to incorporate the hospital, approved February 13th, 1867, and read it for a statement of the object of that institution?

A. (Reading:) "That the object of said corporation shall be the care, nurture, and maintenance of sick, infirm, aged, and indigent persons and of orphan, half orphan, and destitute children,
75 and providing for their temporal and spiritual welfare, and the procuring or erecting a suitable building or buildings."

Q. Do you know that the hospital has been in existence since the date of or shortly after the date of that charter until the present time?

A. I do.

Q. Do you know that they have lately erected a new and large building with the view of extending the scope of their charities and benificence?

A. Yes, sir.

Cross-examined by Mr. EMERY:

Q. Were you a trustee of the hospital in 1870, Mr. Hayes?

A. Yes, sir.

Q. Were you a trustee at the time this letter was received by you—that is, in 1870?

A. Yes, sir; I must have been.

Q. When did your father die?

A. In 1882.

Q. Where was your father at the time that letter was written? Was he here or in Tennessee?

A. I can't say.

Q. Where was the hospital located at the time that letter was written?

A. I think it was on High St., Mr. Emery.

Q. That is a hospital for treatment of the sick, isn't it?

A. Under that act—for the sick, aged, and infirm.

Q. In your management of the hospital have you ever admitted persons there who were not sick?

A. They were aged and infirm as well as sick. I actually know of several cases of aged and infirm people.

Q. It is for hospital treatment of them, isn't it?

A. Not altogether, sir.

Q. Have you rules or regulations for the admission of patients in the hospital, describing the character of the patients who may be admitted?

A. We have them; yes, sir; they have them.

76 Q. They had rules which directed who should be admitted?

A. I think they did, sir; a definite rule; if not, it was left to the committee.

Q. As to what persons should be admitted?

A. Yes, sir.

Q. There is moral and religious instruction in the hospital, isn't there?

A. Yes, sir.

Q. According to the doctrines of what church?

A. The Episcopal Church.

Q. Under the superindendence of what clerical officers is the hospital carried on—subject to whose supervision?

A. The chaplains and the bishops.

Q. The bishop of New Jersey is the head of this church, and he visits the hospital; and the chaplain is of the Protestant Episcopal Church?

A. Yes, sir.

Q. There are no other services there?

A. No other religious services.

Q. And after the rules of the Protestant Episcopal Church?

A. Anybody can be visited by any Christian, by any clergyman.

Q. Do you know anything about this present building which they have, where it is erected?

A. Yes, sir.

Q. Where is it?

A. Montgomery and High streets.

Q. The new building is on the same lot as the old?

A. Adjoining.

Q. You said that you did not attend this sale, Mr. Hayes, but directed some one to purchase for you; whom did you direct?

A. My brother.

Q. Which brother?

A. William.

Q. How much did you direct him to bid?

A. I directed him to bid $3,600.

77 Q. For the further lot?

A. For the first lost.

Q. What did you direct him to bid for the other?

A. $600.

Q. Before the sale had you talked with you Brother Henry about it?

A. In what way?

Q. About your having some one to bid for you; that you would have some one there. You couldn't come yourself, but would have some one there.

A. I went out of town. My two brothers, William and Frederick, were the ones I talked with concerning the purchase.

Q. Did they join in the purchase, or is it your own individual purchase?

A. It is my own individual purchase.

Q. When did you talk with Mr. Wells? You say you talked with him.

A. I can't give the date.

Q. Can you tell about what date?

A. I cannot give the date. I remember seeing him both at Philadelphia and at Newark. Dates I cannot give.

Q. Now, this letter that was written to you by Mr. Keasbey; you said you wrote to him or saw him at the request of your brother?

A. At the request of my brother and father, both.

Q. Was your brother, then, interested in the St. Barnabas hospital?

A. No, sir.

Q. He is an active member of the Episcopal Church, is he not?

A. He is.

Q. He is one of the vestry of one of the Episcopal churches in this city?

A. Yes, sir.

Q. Mr. Keasbey is also a member of the Episcopal Church?

A. Yes, sir.

78 Q. Is not he interested in the St. Barnabas hospital itself?

A. Yes, sir.

Q. Always has had a special interest in that, has he not?

A. Yes, sir.

Q. Do you recollect whether he is one of the trustees?

A. He is.

Q. Was he a trustee when you were there?

A. I think he was.

JEROME B. WARD, produced and sworn for the defendant, testified as follows:

Examined by Mr. KEASBEY:

Q. Are you one of the trustees of the Hospital of St. Barnabas?

A. Yes, sir.

Q. Have you been so for a long time, and have you much interest in its management?

A. I have been so. I was one of the incorporators. I have been a trustee ever since.

Q. Where is that hospital located?

A. At the corner of High and Montgomery streets, running through to Quitman street.

Q. Up to recently in what sort of a building has the hospital administration been conducted?

A. In a large size dwelling-house, formerly the residence of Andrew Lemassena.

Q. You are aware of the objects of the hospital as defined in the second section of its charter, which you have heard read?

A. Yes, sir.

Q. To what actual practical purpose for many years has that hospital been devoted generally?

A. It has been devoted mainly to the care of the sick—not entirely, but mainly.

Q. Has it taken charge of and furnished a retreat for disabled and infirm American mechanics to a large extent?

79 A. It is not specially for mechanics that I know of; it is not limited; it is open and has been open ever since its commencement up to the present time to the admission of all that are included in the charter, without any restriction, but it has been, as I stated first, mainly devoted to the care of sick people; not entirely so.

Q. Has it not been greatly devoted to the care of disabled people?

A. Yes, sir.

Q. Disabled by injuries and diseases?

A. Yes, sir; certainly.

Q. Has it not, as a matter of fact, taken care of a great many American mechanics?

A. No doubt about that.

Q. Is Newark a large manufacturing city?

A. It is.

Q. Do you know that there has been lately made a large improvement in the buildings of the hospital?

A. There has been a large addition; yes, sir; a new building has been put up.

Q. Have you been one of the building committee of that new building?

A. Yes, sir.

Q. What is the general character and capacity of that new building?

A. It is to increase the capacity for the working of the hospital.

Q. About how large is it?

A. I don't believe I can tell you, Mr. Keasbey. It is something like 140 x 25—three stories high, practically four stories—brick building.

Q. Well, fitted up with all the improvements of a modern hospital?

A. Yes, sir.

Q. How long has it been actually open for the reception of patients and other persons?

A. I should think about six or eight weeks.

80 Q. Was it only within a few weeks formally dedicated and opened?

A. Yes, sir.

Q. At the time of the beginning of this suit the building was not completed, was it?

A. No, sir.

Q. Do you know of the fact that a communication was made from Mr. Hayes offering to give this Hayes fund to the hospital for the puspose of being applied for the benefit of aged and infirm American mechanics?

A. Yes, sir; I was present when such communication was presented in writing.

Q. Was it accepted by the hospital on those terms?

A. Yes, sir.

Q. Do you know, as a matter of fact, that arrangements have been made in the new building, or are to be finally made, for the establishment of beds to be applied in a special manner for the purposes mentioned in the will of George Hayes, in pursuance of Mr. Hayes' gift as his administrator?

Objected to as improper.

A. I do know that.

Q. How many persons will the hospital accommodate, on an average, as it now is?

A. I think eighty, if I remember.

Q. Has it a staff of physicians and a body of sisters or persons skilled in nursing and in the care of disabled, aged, and infirm in constant charge?

A. Yes, sir.

Q. Is it furnished with necessary appliances and appurtenances to carry out the objects named in the will of George Hayes?

A. As far as I am able to judge, yes, sir. I have not thought about it.

Cross-examined by Mr. EMERY:

Q. Mr. Ward, has the hospital any printed rules or regu-
81 lations for admission and treatment, by-laws, or anything of that kind regulating the admission of patients?

A. I don't know that.

Q. Has it any by-laws?

A. Yes, sir; there are by-laws.

Q. Where are those; where can I get a copy of those?

A. I think the secretary has them; I believe I have a copy at home.

Q. Who were the trustees in 1870; do you recollect?

A. No; I couldn't tell.

Q. Mr. Keasbey was one of the trustees?

A. I think not in 1870.

Q. A trustee later?

A. Yes, sir.

Q. Do you recollect about what time?

A. I don't know. I think Mr. Keasbey has been a trustee, to the best of my recollection, for six years.

Q. You can't, then, state from recollection what the rules of the hospital are as to the admission of persons?

A. No, sir.

Q. Is there any restriction as to their connection with any of the parishes of the Episcopal Church?

A. No, sir.

Q. Are people kept there if they are able to support themselves or if they have friends who are able to support them; do you know?

A. Well, I don't know that I quite comprehend the bearing of that question.

Q. I ask you whether the hospital allows the admission of persons who have friends who can take care of them or who are able to take care of themselves. Isn't it for indigent people mainly? Isn't it established for the benefit of poor people?

A. Not entirely so.

Q. What are the regulations of the institution, do you recollect, as to dismissing people when they have recovered?

82 A. I think that, as a rule, when they have recovered their health they are discharged.

Q. Does the hospital keep any people there who are not there for the purpose of establishing their health?

A. Yes, sir; there have been cases where they have been kept there; kept there for several years.

Q. What cases were those?

A. Cases where the parties were not able to take care of themselves; they were chronic cases.

Q. Chronic cases of what?

A. Disability.

Q. Kept there as sick people, then?

A. Disabled people.

Q. All these disabled or sick people and the others are in one institution, are they not?

A. Never had but one building.

Q. Most of the people whom you have there are sick people, are they not?

A. Yes, sir.

Q. And have been since the organization?

A. Yes, sir.

Q. Well known as the Hospital of St. Barnabas?

A. It is the Hospital of St. Barnabas, yes, sir; that title was adopted in accordance with the second section of the charter, and it did not restrict it to what the general acceptation of hospital means—hospital in its widest sense.

Q. It is generally known as a hospital; a place for sick people?

A. I suppose it is; but, at the same time, the objects are very much wider than that.

Q. You mean the objects, as you think they are stated by the charter, are wider?

A. Yes, sir; I happen to know, because I was one of the parties who got up the charter. I know what the understanding was in that section.

Q. Then the institution has not, so far, practically been car-
83 ried on on what you call the widest acceptation of the charter, but has been mainly confined to the treatment of the sick?

A. Yes, sir.

Q. That is the reason its general reputation as a hospital has been established?

A. Yes, sir.

Redirect examination:

Q. Is it the design of the trustees to make a further addition to this building as soon as arrangements can be made, and still further to extend the use and scope of the hospital in pursuance of the second section of the charter?

A. So far as I understand it; yes, sir.

By consent of counsel for defendant the extracts from the minutes of the Hayes Mechanics' Home, certified to by Mr. Dundas T. Pratt, are admitted as true copies of the minutes, and in lieu of the production of the book, which book will be produced at the hearing.

Adjourned to two o'clock p. m. (2 o'clock p. m.), 721 Broad street.
Adjourned to September, 1885.

C. N. WILLIAMS, *Examiner.*

NEWARK, *Sept. 11th*, 1885—11 o'clock a. m.

Testimony on Behalf of Defendant Continued Before C. N. Williams, Examiner, 721 Broad Street.

P-esent: John R. Emery, Esq., counsel for complainants; A. Q. Keasbey, Esq., counsel for defendant.

JOHN N. STANSBURY called on behalf of defendant and sworn.

Direct examination by Mr. KEASBEY:

Q. Are you rector of Christ church, Newark?

84 A. I am, sir.

Q. How long have you been rector of that church?

A. I think twenty-five years, sir.

Q. Were you living in Newark at the time of the organization and incorporation of the Hospital of St. Barnabas?

A. I was.

Q. Were you one of the gentlemen who originated and formed the plan for the establishment of such an institution?

A. I was, sir.

Q. Was that institution designed as merely a hospital for the sick, or had it wider purposes?

Objected to. Its object is shown by the charter.

A. It had wider purposes.

Q. Will you read from the charter the purposes for which that institution was formed in pursuance of the plan of those who organized it?

A. (Reading:) The care, nurture, and maintenance of sick, infirm, aged, and indigent persons; of orphan, half-orphan, and destitute children and providing for their temporal and spiritual welfare, and the procuring and erecting of suitable building or buildings.

Q. Has that institution been in actual operation for a number of years?

A. I think above nineteen years, sir.

Q. Where was it carried on until recently—during the last few years?

A. Carried on in High street; corner of High street and Montgomery.

Q. Was the building there built for that purpose?

A. It was not, sir, originally.

Q. Has there been a new building recently put up on the same lot?

A. Yes, sir.

Q. Specially designed?

85 A. Specially designed for the purposes herein named in this charter.

Q. As a matter of fact, has that hospital in the care of persons brought to it furnished relief to mechanics as well as others?

A. Yes, sir; certainly; very largely, I would say.

Q. Is Newark a manufacturing city?

A. Yes, sir.

Q. Have you been familiar with the working of the hospital and the purposes of its trustees for a number of years past?

A. I have.

Q. Were you present at the meeting of the trustees when the proposition of Mr. Henry Hayes, administrator with the will annexed of George Hayes, was made to devote the residue of that estate derived from the New Jersey property and amounting to something over five thousand dollars to the purpose of uniting in the support of the Hospital of St. Barnabas?

A. I was present.

Q. Did you hear the discussion that took place at that time?

A. I did.

Q. Was that proposition accepted?

A. It was.

Q. Has the money been paid into the treasury of the hospital?

A. It has.

Q. What steps have been taken on the part of the trustees to devote and apply that money to the purposes mentioned in the will of George Hayes?

A. Well, first of all they accepted the money, and clearly understanding the scope of the will they determined to apply two beds for the use of American mechanics disabled, infirm, or aged.

Q. Repeat the words of the will.

A. Disabled, infirm, aged, and deserving American mechanics.

86 Q. What is estimated as the fund to be raised for the support of each bed in that institution?

A. Three thousand dollars.

Q. Six thousand dollars would establish two permanent beds in that institution, wouldn't it?

A. It would.

Q. When was the institution—the new building—dedicated and put into actual use, as nearly as you can give it?

A. About the 25th of last May; I can't tell the day.

Q. Do you know whether it is the design of the trustees to extend that building when means are procured?

A. Yes, sir; it is.

Q. How is the present building placed upon the ground with reference to the old building and with a view to its removal?

A. Our lot runs east and west from Montgomery street to Quitman street.

Q. Quitman street to High street?

A. Yes, sir; from High street to Quitman, and our hospital begins near the corner of Quitman and runs 145 feet towards High street, and we expect to extend by building an L on High street, on the site of the old building, extending still further down.

Cross-examined by Mr. EMERY:

Q. This is a general hospital, is it not, Mr. Stansbury, for the accommodation of the sick; or is it for the sick of a particular denomination?

A. For all, sir.

Q. Are there special rules or regulations for admitting patients who come from the Episcopal church?

A. No, sir.

Q. Have you rules and by-laws regulating the admission of patients?

A. Of patients of our churches?

Q. Admission of persons into the hospital.

A. There are rules formed by the medical faculty.

87 Q. No persons can be admitted to the hospital unless under the regulations of the medical staff?

A. The sisters can admit them.

Q. Where are your rules and regulations which indicate who have the power of asking admission to the hospital and the rules under which they are admitted? Are those printed anywhere?

A. I can't say whether they are or not, sir. I understand from the treasurer, who is here present, that he has a copy.

Q. Then this fund you hold for the support of two beds in that hospital—this five thousand dollars from Hayes?

A. It is held for the support of two beds in the hospital under certain restrictions.

Q. That is, nobody else can get in these two beds except aged and infirm American mechanics?

A. I won't say that, sir.

Q. Please explain how these two beds are appropriated. What is your idea about that?

A. My idea is that the hospital has appropriated this amount of money, and that whenever the persons herein named—disabled, infirm, aged, and deserving American mechanics—apply they should be admitted.

Q. Admitted for what purpose?

A. Well, for the purpose of having a home there or for treatment, as the case demands.

Q. Where are these beds that you have appropriated, in with other beds of the hospital?

A. I can't say that, sir. The hospital has just been opened a little while.

Q. And its principal use is the treatment of the sick, isn't it?

A. Its principal use now is.

Q. Has it not been since the time of its organization?

A. The principal, not the entire, use.

Q. What other use has it had?

A. Well, there have been there orphans, and there have been one or two old persons there.

Q. Kept how long?

88 A. Well, I can't say that, sir.

Q. Were they kept there permanently or merely temporarily?
A. Well, I can't tell how long a time.
Q. Under what circumstances were they kept, if you recollect; and how many of these old persons were there?
A. I can't answer that question.
Q. I understood you to say that there have been one or two.
A. One or two that I know of.
Q. You don't know of more than one or two?
A. No, sir; I don't visit the hospital frequently.
Q. You don't know where these beds are; that there are any special beds appropriated?
A. Well, I know that there are beds appropriated from the fact that it is decided to appropriate them.
Q. Do you know the fact that there are two beds indicated?
A. No, sir.
Q. When was this new building erected—about?
A. It was opened about the 25th of May of this year.
Q. Does it adjoin the old building, or is it near it?
A. It is near it.
Q. Is the hospital divided into wards or is it composed of rooms?
A. It has both, wards and rooms.
Q. There are in the city of Newark two or three charities which are specially devoted to the purpose of homes, are there not, that you know of, as distinguished from a place of treatment of the sick?
A. I know one, sir.
Q. Which is the Foster Home?
A. The Foster Home is an orphan asylum.
Q. What are the others?
A. The Respectable Old Women's Home—I think that is the title.

89 Redirect examination:

Q. At the time when this bequest was accepted and the arrangements resolved upon by the board to establish two beds for the special use of this trust, was the building in such a condition that the exact location of the beds could then be ascertained, or was it in the course of completion?
A. It was being completed.
Q. Have you had any charge, personally, since of the arrangement and distribution of the rooms of the hospital, so that you can say whether or not the particular spot in the hospital has yet been determined where these beds are to be?
A. I have not, sir.
Q. Do you know, Mr. Stansbury, that during the course of that hospital there have been numerous cases of aged people, disabled and infirm, who have been kept there till they died?
A. I know of that, sir.
Q. You speak of one or two as within your special knowledge; but do you know, as a fact, that it has cared for and maintained a number of disabled and infirm people until they died in the hospital?
A. Yes, sir; I know that.

Recross-examination:

Q. Were those persons admitted there sick, do you know?
A. I don't know. I think not, sir.
Q. What do you know of them?
A. I simply know the general fact, sir.
Q. You don't recall any special cases of your own knowledge besides those one or two that you spoke of?
A. There might be quite a number, sir, I wouldn't know of. I am not in the way always to know of.

90 ALANSON H. WARD, produced for the defendant and sworn, testifies as follows:

Examination by Mr. KEASBEY:

Q. Are you the treasurer of the Hospital of St. Barnabas?
A. I am.
Q. How long have you occupied that position?
A. A little over a year.
Q. How long have you been connected with the hospital in any way?
A. Only that time.
Q. Have you received from the administrator, with the will annexed, of George Hayes a sum of money, over five thousand dollars, known as the Hayes bequest?
A. That sum was received by my predecessor and is upon his books, which I possess.
Q. Were you present at the meeting when that was accepted?
A. No, sir.
Q. Have you, since your appointment, been a member of the committee entrusted with any duty with reference to that fund?
A. Yes, sir; at a meeting of the board some time since a committee was appointed to acknowledge gifts and erect suitable tablets in the new hospital building recognizing the same—to carry out all that work of making the acknowledgements and suitably noticing them.
Q. Do you know whether the actual appropriation of a definite part of the building has yet been completely settled?
A. Yes, sir—that is, the committee have prepared different kinds of tablets for different purposes, and the one that is designed to the place for the Hayes legacy is to be placed between two beds—the hospital is in pavilion wards—long wards—with beds on each side. This is to be placed on the wall between two beds and to bear the inscription on brass as the others are—"George Hayes'
91 memorial, for the care of aged, infirm, and disabled American mechanics."
Q. And are those beds to be devoted especially to those uses?
A. That is the understanding. The reason it was put between two beds was because by the rules of endowments the sum of three thousand dollars is fixed for the perpetual support of a bed, and this would support two beds, and this inscription was put between the two instead of one over each. I should perhaps say that there were

no tablets or inscriptions in the old building, but the officers were waiting until we got that done.

Q. Do you know whether it is designed as soon as possible to enlarge that building and still further to increase the accommodations and the number of rooms and wards?

A. It is, sir.

Q. Do you know whether it is the intention of the trustees to devote somewhere in that building always, or in the new building, two beds permanently for the use of aged, infirm, and deserving American mechanics under the Hayes trust?

A. I suppose it is; I don't know anything to the contrary.

Q. Don't you know that that is the design of the board in its action?

A. Certainly.

Cross-examined by Mr. EMERY:

Q. Have you a copy of the rules of the hospital?

A. That information is in there (indicating annual report).

Q. The rules appear in the eighteenth annual report?

A. Yes, sir.

Defendant's counsel offers in evidence a copy of the by-laws, which is marked Defendant's Exhibit No. 1, of this date; also a copy of the rules which appear in the eighteenth annual report, which is marked Defendant's Exhibit No. 2, of this date.

92 Q. How are those two beds arranged, Mr. Ward?

A. All of the beds in the hospital are, as I say, in the pavilion wards, and the beds with their heads to the wall and their feet towards the center, the pavilions being open on either side; none of the tablets have yet been placed there, but are being prepared, and then this will be placed between any two beds that may be designated; the beds have not yet been distinctly designated, but they will be in that ward.

Q. How many beds will the pavilion contain?

A. Without knowing exactly I should say about twenty-four.

By consent of defendant's counsel two photographs of the Hayes Mechanics' Home are offered by the complainants, and it is admitted that the building is still in the hands of the mechanics, approaching completion. Said photographs are marked respectively Exhibit No. 13 and Exhibit No. 15 for Complainant- of this date.

721 BROAD ST., NEWARK, *January* 11, 1886.

Testimony on Behalf of the Defendants Resumed before C. N. Williams, Examiner.

Present: Same counsel.

THOMAS E. SISSERSON, produced and sworn for defendants, testifies as follows:

Examined by Mr. E. Q. KEASBEY:

Q. You are the secretary of the trustees of the Hospital of St. Barnabas?
A. Yes, sir.
Q. Were you present at the meeting of July 1st?
A. Yes, sir; I was.
Q. To keep the minutes?
A. The meeting was held June 4th.
93 By Mr. EMERY: Were you present at the meeting of June 4th?
The WITNESS: Yes, sir.
Q. Is this the minute of the meeting (producing paper)?
A. Yes, sir; of the meeting held June 4th.

Said minute is offered in evidence and marked Defendant's Exhibit No. 3, January 11th, 1886.

C. N. WILLIAMS, *Examiner.*

Q. This is not written in the book yet?
A. No, sir.

Cross-examined by Mr. EMERY:

Q. That is your signature, is it?
A. Yes, sir.
Q. You say these minutes have not yet been approved?
A. They have been approved; but at the time I gave Mr. Keasbey the book they had not been, and so, of course, I did not write them in the book; they were approved at a subsequent meeting; we had a meeting, I think, in October; I can't tell exactly.

Redirect:

Q. This meeting was June 4th, 1885?
A. Yes, sir; 1885.

WILLIAM SPEIDEN, produced and sworn for defendant, testifies as follows:

Examined by Mr. KEASBEY:

Q. You are one of the trustees of the Hospital of St. Barnabas?
A. Yes, sir; I am.
Q. How long have you been such?
A. Over seven years.

Q. On what committees are you?

94 A. I have been for many years on what is known as the visiting and inspecting committee.

Q. You are, then, thoroughly acquainted with the workings of the institution?

A. I think, generally so, I am.

Q. What is the nature and objects of the institution?

A. The nature and objects of the institution might be said to be the care of the sick, disabled, aged, and infirm. It covers a multitude of ground within the scope of caring for sick, aged, and infirm persons.

Q. Do you know whether, as a practical matter, this institution has been used strictly and only as a hospital in the narrower sense, or as an institution for the care and nurture of persons of all classes who need care and nurture for various reasons?

A. It is not alone used specially for sick persons. Aged and infirm persons have been brought into the institution and cared for, not from the fact of their having disease, but from their being aged and infirm; to give them comfort such as such an institution could give.

Q. Do you know what has been the effort of the trustees in that particular—as to widening the uses of the hospital to embrace all such cases?

A. Will you make that question a little clearer?

Q. My object is to know whether, on the part of the trustees, the design has been to avoid restricting it to surgical cases or the strict uses of a hospital, but to broaden it as far as possible under the terms of the charter.

A. I think that that has been their aim.

Q. The latter has been their aim?

A. Yes, sir.

Q. Were you present at the meeting of the board at which the bequest of Mr. Hayes was accepted?

A. I think I was, sir. I am almost positive I was.

Q. Do you know whether at or about that time the construction of the new building was under way or at least in preparation?

95 A. The new building was in course of erection at that time.

Q. What measures have been taken by the trustees of the hospital to devote a part of the building to the uses mentioned in the testator's bequest?

A. A portion of the building has been set apart for that purpose; a very comfortable room.

Q. Has that room been actually occupied by persons such as those designated in the will?

A. I think not at present.

Q. Has it been?

A. If so, it has not been for any length of time. I can't say positively that it has not been.

Q. Has there been any mark or indication placed upon that room indicating the purposes to which it is devoted?

A. There has been, sir.

Q. What mark?

A. If I recollect correctly, there is a large sign directly over the door bearing the Hayes—I think it is called the George Hayes Memorial Home for aged and infirm American mechanics. I think that is about the designation.

Q. By the minutes of the meeting of July 1st, 1885, it was directed that that room be used for the purpose and that a tablet be placed upon the walls. Were you present at that meeting?

A. I was.

Q. Can you state that the direction of that resolution has since been carried out?

A. Yes, sir.

Cross-examined by Mr. EMERY:

Q. This tablet you speak of—that has been put over the door since the passage of this resolution?

A. Yes, sir.

Q. This resolution speaks of a room in the third story of the building. How many stories has the building?

A. Four stories. This room is directly over the operating-
96 room. It is a very nice room—a very comfortable room. It is directly opposite the elevator.

Q. How large a room is it, about?

A. Well, I should think it was a room eighteen or twenty feet square.

Q. What has it in it?

A. It has furniture, beds, chairs.

Q. How many?

A. It has two beds in it; a bureau and plain chamber furniture; d very comfortable.

Q. About how many inmates of the hospital are there now at present?

A. I think in the neighborhood of forty; they vary.

Q. About the number I am speaking of?

A. Yes, sir.

Q. That is about the number you have had for a long time?

A. Yes, sir; we have had fifty.

Q. Most of those are people whom you have admitted as sick people?

A. Yes, sir; some of them are infirm people—brought in to give them a comfortable home.

Q. Anticipating their death in a short time?

A. Yes, sir.

Q. Those people of that character, were they mainly those who have been connected with the church—the Episcopal Church?

A. Not at all.

Q. As to the actual fact they have been mainly either those who had friends in the Episcopal Church or had been connected with the Episcopal Church.

A. Not at all.

Q. I only want to know, as a matter of fact, whether these people were admitted in that way.

A. No, sir; they were not.

Q. I suppose all those needed medical attention?

A. Yes, sir; and more especially for the comforts that exist in an institution of that kind; you can say just to give them cer-
97 tain care, nursing, and watching. I might mention the case of one who came in, I think, some little time ago.

Q. And has since died?

A. No; came in and felt a little better and went out, of course, as soon as the doctors thought them well enough to go out.

Q. Is that the rule of the institution?

A. No, sir; they go out if they have a home or friends where they can go to.

Q. If they have a home to go to they are to go out?

A. As a usual thing; of course there are exceptional cases?

Q. What would be the exceptional cases?

A. They would be allowed to stay.

Q. You don't take any persons except those who are dependent upon charity?

A. No, sir.

Q. That is the usual rule of the hospital?

A. That is the usual rule of the hospital.

The defendant's counsel thereupon announced that the testimony on behalf of the defendants was closed.

98 EXHIBITS FOR COMPLAINANTS.

Exhibit No. 1 (p. 30). Certified copy of petition of Hayes Mechanics' Home to the orphans' court of the county of Philadelphia, applying for conveyance to it of real estate in Philadelphia and Michigan of which George Hayes died seized, filed June 17, 1864; order of reference thereon, report of examiner, and order for conveyance, Sept. 23, 1864.

Exhibit No. 2 (p. 30). Original certificate of incorporation of Hayes Mechanics' Home.

Exhibit No. 3 (p. 30). Copy of act of legislature of Pennsylvania, dated ——, conferring the charter.

Exhibit No. 4 (p. 31). Printed copy of constitution and by-laws of the Hayes Mechanics' Home, with a list of the corporators in May, 1885.

Exhibit No. 5 (p. 32). Deed, dated Nov. 7, 1864, from Wells, executor, to the Hayes Mechanics' Home, for real estate in Philadelphia, conveyed by order of orphans' court.

Exhibit No. 6 (p. 32). Deed, dated Nov. 7, 1864, from same to same, for lands in Michigan.

Exhibit No. 7 (p. 36). Plans adopted for the Hayes Mechanics' Home.

EXHIBIT No. 8 (p. 41).

Letter of D. T. Pratt to Henry Hayes, Dated Nov. 15, 1882.

727 WALNUT STREET,
PHILA., *Nov.* 15*th*, 1882.

DEAR SIR: I have received a copy of notice to me in the matter of your application to be appointed admin. *d. b. n.* of the
99 estate of George Hayes, succeeding in that capacity to your deceased father. Remembering the pleasant relations I have heretofore sustained to your friend in a business sense, and more recently on your father's visit here touching the estate of George Hayes, *that* I thought it well to write to you. Very recently I was informed, since your father's death, there was certain real estate in Newark yet in the name of George Hayes, and supposing that to be untrue I had written to Mr. McDonald to learn as to it, and in response comes this notice. It is true I was named in the will of George Hayes to act as executor in case your father or L. E. Wells declined; but as both those chosen friends did act and did qualify, I, of course, was not called upon; but I have been identified with the Hayes Mechanics' Home, which was agreed upon as the title of the institution he had founded, and which is by his will the residuary legatee.

I notice by your petition that your father was duly appointed by letters testamentary as the executor or administrator in Newark.

It will give me pleasure, so far as my assent gives validity, to acquiesce in your appointment if you will kindly inform me whether there is any estate yet existing as George Hayes' and whether your good father ever made any account of his administrationship and what course you propose to adopt that the Hayes Mechanics' Home may receive the estate and its avails as part of his residuary estate. Supposing that we cannot be otherwise than in accord as to this final disposition, I wait to hear from you, and in that case can have no wish to interfere in the application.

Yours truly,

D. T. PRATT,
Sec'y Hayes Me. —.

H. Hayes, Esq., Newark, N. J.

EXHIBIT No. 9 (p. 41).

Letter of Henry Hayes to D. T. Pratt, Dated Nov. 22, 1882.

NEWARK, N. J., *Nov.* 22*nd*, 1882.

D. T. Pratt, Esq.

100 DEAR SIR: Replying to yours of the 15th, I would say that I think my father never made any accounting of his administratorship of George Hayes' est., which consists only of a parcel of real estate. During my father's life he cherished the hope that the income of the Geo. Hayes est. could be applied to a bed for mechanics in our hospital in Newark, and I would ask if you think

it could be so used, or a part of it. I would be pleased to act with you in this direction if you can arrange it.

Yours truly, HENRY HAYES.

EXHIBIT No. 10 (p. 41).

Letter of D. T. Pratt to Henry Hayes, Dated Nov. 24, 1882.

PHILADELPHIA, *November* 24, 1882.

DEAR SIR: I am favored with yours of yesterday and thank you for it. I do not see how it is possible to divert the income of the estate you refer to to the support of a bed for mechanics in your Newark hospital. The will of your uncle being made in Philada., where he had spent all his years of maturity, repels any presumption of intention to have the "home" he provided for mechanics anywhere but in Philada., and however much you and I might think it wise to have it otherwise that expressed will must govern us. In like manner by his will his executors were given discretionary power to found an institution or to join with one already founded, but his executors exercised that discretion by preferring to "found a home" that would perpetuate his name; and the executors (your father and L. E. Wells) joined in asking for a charter for such home, under the name "Hayes Mechanics' Home," and in the filing of the executors' account the court directed the residue of the estate to be passed to the new institution. It would therefore not now be possible to divert any of the monies for or to any other institution than the "Hayes Mechanics' Home." I think you will concur with me in thinking that the funds as a whole being devoted to this
101 "home" will be a better monument to his memory than if it were placed in divided charities.

When we are fairly established and ready for inmates I am sure our managers would be most happy to regard any applicant you might commend for admission with their favor, as nothing would prevent their accepting a Newark resident or any other. I suppose the lot you refer to must be sold and its proceeds handed to the "Hayes Mechanics' Home." Whether this can best be done by you as administrator *d. b. n.*, or by the home giving deed as the owners thereof under the bequest to them in your uncle's will, I cannot say, and I suppose some account could be filed by your good self as executor of the small income, if any it has produced. I shall be glad to furnish information or confer further with you, and remain,

Yours truly, D. T. PRATT.

Henry Hayes, Esq., Newark, N. J.

Exhibit No. 11 (p. 42). Letter of Henry Hayes to D. T. Pratt, June 25, 1883. (Printed on page 38.)

Exhibit No. 12 (p. 42). Statement of the assets of the Hayes Mechanics' Home, showing the yearly increase.

Exhibit No. 13 (p. 77). Certified copy of extract from minutes of the Hayes Mechanics' Home relating to the home.

The following extracts from the minutes of the corporators of the Hayes Mechanics' Home are submitted:

October 8, 1858.—Corporators met and accepted the charter granted by the supreme court and enacted by-laws.

May 2, 1859.—First annual meeting and election of managers.

October 25, 1859.—Corporators' meeting appointed a committee "to determine on the selection and purchase of a lot at Belmont for the use of the corporation."

November 8, 1859.—Committee reported favorably and a
102 special committee was appointed "for the consummation of the arrangement as recommended with Mr. F. J. Dreer" (the owner of said lot).

May 6, 1861.—Charter granted by the legislature was accepted.

May 2, 1864.—The executor of the estate of George Hayes presented report on the assets turned over by him to the Hayes Mechanics' Home. Committee appointed "to procure plan, drawings, and estimates for the erection of buildings at Belmont for the home."

May 1, 1865.—Committee appointed "to obtain assistance by solicitations for the 'home,'" and another committee "to enquire into the expediency of an immediate commencement of the erection of buildings and as a building committee.

May 7, 1866.—Resolved, "That Fred. J. Dreer, Esq., be requested to convey the property at Belmont to the home, and the managers requested to attend to completion of same.

December 12, 1866.—Acceptance of an offer for the 16th-street property, the residence of deceased, for $16,000, a mortgage thereon of $4,000 being paid off.

May 19, 1873.—On question of site as to the propriety of building upon the present Belmont lot, whether upon its front or rear, or of disposing of that lot and erecting another less expensive, referred to managers.

June 3, 1873.—Committee reported in favor of the Belmont lot being declared the "site for the home," when it was resolved "that any action looking either to a sale of the lot or the erection thereon of the home" be postponed for one year, and directing a pamphlet to be prepared and published to interest the general public in the work, etc. That pamphlet was published.

June 3, 1874.—Resolved, "That under present circumstances it is deemed advisable to defer action on the subject of the erection of building for the home or the disposing of the lot on Belmont avenue till the annual meeting."

103 May 6, 1878.—A "committee was appointed to ascertain if a temporary building for the home to occupy can be procured."

May 20, 1878.—Committee reported and was continued, "with instructions to procure a suitable building for the temporary use of the home," and manager instructed to at once proceed to select plans, procure estimates of cost, and to fix upon the location of building on such part of the Belmont lot as they may deem best.

May 5, 1879.—Chairman of committee to procure temporary

it could be so used, or a part of it. I would be pleased to act with you in this direction if you can arrange it.

Yours truly, HENRY HAYES.

EXHIBIT No. 10 (p. 41).

Letter of D. T. Pratt to Henry Hayes, Dated Nov. 24, 1882.

PHILADELPHIA, *November* 24, 1882.

DEAR SIR: I am favored with yours of yesterday and thank you for it. I do not see how it is possible to divert the income of the estate you refer to to the support of a bed for mechanics in your Newark hospital. The will of your uncle being made in Philada., where he had spent all his years of maturity, repels any presumption of intention to have the "home" he provided for mechanics anywhere but in Philada., and however much you and I might think it wise to have it otherwise that expressed will must govern us. In like manner by his will his executors were given discretionary power to found an institution or to join with one already founded, but his executors exercised that discretion by preferring to "found a home" that would perpetuate his name; and the executors (your father and L. E. Wells) joined in asking for a charter for such home, under the name "Hayes Mechanics' Home," and in the filing of the executors' account the court directed the residue of the estate to be passed to the new institution. It would therefore not now be possible to divert any of the monies for or to any other institution than the "Hayes Mechanics' Home." I think you will concur with me in thinking that the funds as a whole being devoted to this
101 "home" will be a better monument to his memory than if it were placed in divided charities.

When we are fairly established and ready for inmates I am sure our managers would be most happy to regard any applicant you might commend for admission with their favor, as nothing would prevent their accepting a Newark resident or any other. I suppose the lot you refer to must be sold and its proceeds handed to the "Hayes Mechanics' Home." Whether this can best be done by you as administrator *d. b. n.*, or by the home giving deed as the owners thereof under the bequest to them in your uncle's will, I cannot say, and I suppose some account could be filed by your good self as executor of the small income, if any it has produced. I shall be glad to furnish information or confer further with you, and remain,

Yours truly, D. T. PRATT.

Henry Hayes, Esq., Newark, N. J.

Exhibit No. 11 (p. 42). Letter of Henry Hayes to D. T. Pratt, June 25, 1883. (Printed on page 38.)

Exhibit No. 12 (p. 42). Statement of the assets of the Hayes Mechanics' Home, showing the yearly increase.

Exhibit No. 13 (p. 77). Certified copy of extract from minutes of the Hayes Mechanics' Home relating to the home.

The following extracts from the minutes of the corporators of the Hayes Mechanics' Home are submitted:

October 8, 1858.—Corporators met and accepted the charter granted by the supreme court and enacted by-laws.

May 2, 1859.—First annual meeting and election of managers.

October 25, 1859.—Corporators' meeting appointed a committee "to determine on the selection and purchase of a lot at Belmont for the use of the corporation."

November 8, 1859.—Committee reported favorably and a
102 special committee was appointed "for the consummation of the arrangement as recommended with Mr. F. J. Dreer" (the owner of said lot).

May 6, 1861.—Charter granted by the legislature was accepted.

May 2, 1864.—The executor of the estate of George Hayes presented report on the assets turned over by him to the Hayes Mechanics' Home. Committee appointed "to procure plan, drawings, and estimates for the erection of buildings at Belmont for the home."

May 1, 1865.—Committee appointed "to obtain assistance by solicitations for the 'home,'" and another committee "to enquire into the expediency of an immediate commencement of the erection of buildings and as a building committee.

May 7, 1866.—Resolved, "That Fred. J. Dreer, Esq., be requested to convey the property at Belmont to the home, and the managers requested to attend to completion of same.

December 12, 1866.—Acceptance of an offer for the 16th-street property, the residence of deceased, for $16,000, a mortgage thereon of $4,000 being paid off.

May 19, 1873.—On question of site as to the propriety of building upon the present Belmont lot, whether upon its front or rear, or of disposing of that lot and erecting another less expensive, referred to managers.

June 3, 1873.—Committee reported in favor of the Belmont lot being declared the "site for the home," when it was resolved "that any action looking either to a sale of the lot or the erection thereon of the home" be postponed for one year, and directing a pamphlet to be prepared and published to interest the general public in the work, etc. That pamphlet was published.

June 3, 1874.—Resolved, "That under present circumstances it is deemed advisable to defer action on the subject of the erection of building for the home or the disposing of the lot on Belmont avenue till the annual meeting."

103 May 6, 1878.—A "committee was appointed to ascertain if a temporary building for the home to occupy can be procured."

May 20, 1878.—Committee reported and was continued, "with instructions to procure a suitable building for the temporary use of the home," and manager instructed to at once proceed to select plans, procure estimates of cost, and to fix upon the location of building on such part of the Belmont lot as they may deem best.

May 5, 1879.—Chairman of committee to procure temporary

quarters reported that illness had prevented his attention to that duty.

June 2, 1879.—Committee on temporary building reported and submitted various properties. Meeting adjourned till the following Thursday to enable the corporators to examine such.

June 5, 1879.—Absence of chairman prevented any report of temporary building.

June 10, 1879.—Committee reported that no suitable property had been found for temporary occupancy, and committee continued.

May 10, 1880.—No action taken, the matter being discussed, and the feasibility of building at once on Belmont was continued.

May 2, 1881.—Committee appointed to examine a certain building in the park with reference to its purchase and utilization for the purposes of home.

October 4, 1882.—Action in respect to increasing number of corporators—making application to court for such authority—deferred in order to "enquire into the facilities that are likely to exist by which our lot at Belmont can be reached by rail."

A member made report of the existence of certain properties at Newark that in his opinion belonged to the estate of George Hayes, and it was resolved, "That the secretary be authorized to confer with and if necessary to employ counsel at Newark to investigate such claim."

November 17, 1882.—Committee reported "in respect to
104 the facilities for reaching our Belmont lot by rail, that the new contemplated Schuylkill Valley R. R. would pass near to the lot and a station be established not distant."

May 7, 1883.—Treasurer reported receipt of gift of $9,500 from F. J. Dreer. A committee was appointed to procure plan from competent architects and submit same to future meeting.

November 27, 1883.—Death of a member of committee on plans announced and another appointed to fill the vacancy. Committee reported having conferred with architects.

May 12, 1884.—Committee reported, whereupon the number of committee was increased and they authorized to consult one or more architects and power given to act.

June 2, 1884.—Mr. Hale, architect, presented plan, etc., but — the absence of two members of committee no action taken.

June 10, 1884.—Committee presented plan by Mr. Chandler, architect.

October 9, 1884.—Mr. Chandler, architect, was authorized to perfect his plans and specification for the building as proposed by him, and to invite proposals for erecting the same, and present such as soon as practicable.

November 6, 1884.—"Resolved, That the architect be authorized to contract for the requisite amount of stone to erect the building, and that the contract for the erection of the same be postponed till on or about the 1st February. This was in view of reduced prices. Resolved, That the architect be requested to prepare plans and elevations for one or more of the cottages (or auxiliary buildings) intended to be erected near to the main building, which cottages, it is

understood, shall cost not exceeding $10,000 each, and that he be requested to furnish ground plans for the erection of the additional cottages, say five on each side of the main building, so as to give a complete perspective view of the contemplated series of buildings."

January 26, 1885.—Architect authorized to advertise for
105 proposal and to make contracts for the erection of the main building and of one cottage building.

March 30, 1885.—Contracts submitted, executed by the president and secretary by order, for the main building and one cottage building.

May 15, 1885.—Buildings are both in progress, cellar dug and walled, and are to be completed by contract by November, 1885.

I certify the above to be faithful extracts from the minutes of the Hayes Mechanics' Home.

Witness my hand — seal of corporators.

D. T. PRATT, *Secr'y.* [SEAL.]

Philada., May 15, 1885.

Exhibit- No. 14 and 15 (p. 86). Photographs of the Hayes Mechanics' Home.

EXHIBITS FOR DEFENDANTS.

Exhibit No. 1, Sept. 11, 1885 (p. 85). Printed copy of by-laws of St. Barnabas hospital.

Exhibit No. 2, Sept. 11, 1885. Printed copy of rules in 15th annual report of hospital.

Exhibit No. 3 (p. 57). Minutes of meeting of trustees of St. Barnabas hospital, June 4th, 1885.

Exhibit No. 4. Copy of minutes of meetings of St. Barnabas hospital Oct. 5, 1883, March 17, 1884, May 8, 1884, Nov. 20th, 1884, July 1, 1885, allowed to be offered by consent of complainants' counsel after evidence of defendants closed, on condition that the letters of Henry Hayes of March 4, 1884 (printed page 52), and copies of the bonds and mortgages referred to in the resolution be also produced to be marked as exhibits.

106 NEWARK, N. J., *October 5th*, 1883.

A regular meeting of the board of trustees was held this evening at Grace church rooms, Rev. Mr. Christian in the chair, with the following gentlemen present: Rev. Messrs. Goodwin, Roberts, and Messrs. Dodd, Dr. Mercer, Ward, Jackson, Toppin, Speiden, Keasbey, Young, Richards, and Rev. Messrs. Bishop and Richardson.

The treasurer's report was read and accepted.

Mr. Keasbey read an abstract from the will of George Hayes, of Philadelphia; also a letter regarding the same. After debate, the following resolution was offered by Mr. Keasbey:

Resolved, Mr. Henry Hayes, administrator, with the will annexed, of George Hayes, deceased, having signified his willingness to appropriate to the use of the Hospital of St. Barnabas a fund of about

$3,000, part of the residue of the estate of George Hayes bequeathed to his executors to be applied to uniting in the support of any institution founded to furnish a retreat for disabled, infirm, aged, and deserving American mechanics, provided the hospital shall indemnify against any loss or liability by reason of such appropriation and use of said fund:

Resolved, That said fund be accepted and the president be authorized to execute a proper bond of indemnity to Mr. Hayes, as suggested by him, and deliver such bond on receipt of the money.

On motion, the whole matter was referred to Mr. Keasbey.

NEWARK, N. J., *March 17th*, 1884.

A special meeting of the board of trustees was held this evening at Grace church rooms, Rt. Rev. T. A. Starkey in the chair, with the following present: Rev. Messrs. Stansbury and Christian and Messrs. Young, Speiden, Mercer, Ward, Keasbey, Richards, Tipple, Connett, Webbe, and Toppin.

A letter dated March 4th, 1884, was read from Mr. Henry
107 Hayes, administrator of George Hayes, deceased. The same was read and considered, and, on motion, the following resolution was read and adopted:

Resolved, That whereas Henry Hayes, administrator, with the will annexed, of George Hayes, proposes to transfer to this institution the fund in his hands belonging to the estate of said George Hayes, and amounting to about five thousand dollars ($5,000), remaining after settlement of his account in the orphans' court, which fund is to be solely employed for the purposes mentioned in said will:

Resolved, That the Hospital of St. Barnabas consents to receive said fund, and it hereby agrees to use such fund solely for the purpose of furnishing a retreat and home for disabled or aged and infirm and deserving American mechanics, in accordance with the will of the late George Hayes.

NEWARK, N. J., *May 8th*, 1884.

A special meeting of the board of trustees was held this evening at Grace church rooms.

Present: Rt. Rev. Bishop Starkey, Rev. Messrs. Stansbury, Cranberry, Wood, Bishop, and Messrs. Mercer, Keasbey, Ward, Teese, Darcy, Jackson, Webbe, Ray, and Young.

In the absence of the secretary, Mr. Young was appointed secretary *pro tem.*

Mr. Keasbey submitted for the approval of the trustees a bond and mortgage to Henry Hayes, administrator of the estate of George Hayes, deceased; whereupon the following resolutions were adopted:

Resolved, That the president and secretary be authorized to execute the bond and mortgage now presented to the board, the bond in the sum of ten thousand dollars ($10,000), the mortgage covering all the hospital property west of the east wall of the new building now in progress and north of the south line of the property extended to Quitman street, and to deliver the same to Mr. George

Hayes upon receiving the fund mentioned in the bond and mortgage, to be applied in pursuance of the will of George Hayes.

NEWARK, N. J., *Nov.* 28, 1884.

A special meeting of the board of trustees was held this evening, Rt. Rev. Bishop Starkey in the chair, with the following gentlemen present: Rev. Messrs. Stansbury and Bishop and Messrs. Darcy, Ward, Jackson, Toppin, Speiden, Tipple, Ray, and Keasbey.

Mr. Keasbey offered the following preamble and resolution:

Resolved, Henry Hayes, administrator *de bonis non* of George Hayes, deceased, has lately paid over to the Hospital of St. Barnabas the sum of $5,153.27, pursuant to the provisions of the will of said George Hayes, and has taken from said hospital a bond conditioned for the repayment to said Hayes of said sum of money on the contingencies therein mentioned.

And whereas said bond has been secured by a mortgage upon property of said hospital, which mortgage the said Hayes is willing to surrender and cancel of record in order that the hospital may obtain a loan of money elsewhere and secure such loan by a first mortgage upon such property, the said Hayes being willing to receive a second mortgage upon the said property and further security hereinafter mentioned;

And whereas Sarah M. Carman has lately died, bequeathing to the hospital a large sum of money, and the said Hayes is willing that the first moneys received from her estate by said hospital shall be set apart to the amount of $5,153.27, with interest from the date of said bond, to stand as security for the money which he may be liable to pay on any of the contingencies mentioned in said bond, such money so set apart to be invested in such securities as shall be jointly agreed upon by said hospital and said Hayes:

Be it resolved, That the president of the board of trustees of said hospital be authorized to make and execute, in the presence of the secretary of said board, and deliver to said Hayes a new mortgage securing said bond similar to the one which was heretofore delivered to him upon the cancellation of such last-mentioned mortgage; and

109 Be it further resolved, That out of the first moneys received from the estate of said Sarah M. Carman there shall be set apart by the treasurer of the board the said amount of $5,153.27, with interest as aforesaid, for the purpose aforesaid, and said sum shall be invested and reinvested in such securities as shall be jointly agreed upon by said Hayes and this board, and not otherwise.

NEWARK, N. J., *July* 1*st*, 1885.

At the annual meeting of the board of trustees of the Hospital of St. Barnabas held June 4th, 1885, the following resolution was adopted:

Whereas on the 17th day of March, 1884, the trustees of the Hospital of St. Barnabas accepted from the administrator of George Hayes, deceased, formerly of Newark, the sum of $5,153.27, which

was the residue of his estate in New Jersey bequeathed by him to be used for uniting in the support of an institution already founded for the purpose of furnishing a retreat and home for disabled or aged and infirm and deserving American mechanics, and was given to the Hospital of St. Barnabas, in pursuance of the desire and intention of his brother, Jabez W. Hayes, who was the executor of his estate in New Jersey;

And whereas the new hospital building has been complete since the payment of such bequest to the trustees:

Resolved, That a suitable part of the building be fitted up with two beds to be devoted especially to the purposes mentioned by the testator, and that a tablet be placed upon the walls as an indication of these uses and a memorial of the donor of the fund.

110 CITY AND COUNTY OF PHILADELPHIA, *ss:*

REGISTER'S OFFICE, *June 20th*, 1857.

Then personally appeared Jacob Bennett and William Potts, the subscribing witness-to the foregoing will of George Hayes, deceased, and on their solemn oaths & affirm-s did say that they were present and did see and hear Geo. Hayes, deceased, the testator therein named, sign, seal, publish, and declare the same as and for his last will and testament, and that at the doing thereof he was of sound, disposing mind, memory, and understanding, to the best of their knowledge and belief.

JACOB BENNETT.
WILLIAM POTTS.

Sworn, affirmed, and subscribed before me the date above.

JOSEPH C. MOLLEY,
Dep. Register.

CITY AND COUNTY OF PHILADELPHIA, *ss:*

REGISTER'S OFFICE, *June 20th*, 1857.

I do swear and affirm that as the executors of the foregoing last will and testament of George Hayes, deceased, I will well and truly administer the goods and chattels, rights and credits, of said deceased agreeably to law, and that I will comply with the provisions of the law relating to collateral inheritance.

LEWIS E. WELLS.
GOLDSMITHS HALL.

Sworn, affirmed, and subscribed before me the date above and letters testamentary granted unto them.

JOS. C. MOLLEY,
111 *Dep. Register.*

CITY AND COUNTY OF PHILADELPHIA, *ss:*

REGISTER'S OFFICE, *May* 10, 1884.

I do affirm that as the succeeding executor of the foregoing last will and testament of George Hayes, deceased, I will well and truly

administer the goods and chattels, rights and credits, of said deceased according to law, and that I will diligently and faithfully regard and well and truly comply with the provisions of the law relative to collateral inheritance; that the said testator died *on the* about June, A. D. 1857.

DUNDAS T. PRATT,
1111 *Walnut Street.*

Affirmed and subscribed before me the date above and letters testamentary granted unto him.

WM. J. SHIELDS,
Dep. Register.

COMMONWEALTH OF PENNSYLVANIA, } ss:
City and County of Philadelphia, }

REGISTER'S OFFICE, *May 10th*, 1884.

I, Walter E. Rex, register of wills and *ex officio* clerk of the orphans' court for the city and county of Philadelphia, in the Commonwealth of Pennsylvania, do hereby certify the foregoing to be a true and accurate copy of the last will and testament of George Hayes, deceased, together with the probate thereof. Jabez W. Hayes and Lewis E. Wells, two of the executors named in said will, being dead, letters testamentary were duly granted unto Dundas T.
112 Pratt, surviving executor, on the 10th day of May, A. D. 1884, as the same remains on file and of record in this office.
[L. S.] In testimony whereof I have hereunto set my hand and official seal, at Philadelphia, the date above.

WALTER E. REX,
Register of Wills and ex Officio Clerk of Orphans' Court.

STATE OF PENNSYLVANIA, } ss:
Philadelphia County, }

I, William B. Hanna, president judge of the orphans' court of Philadelphia, do certify that the foregoing certificate and attestation made by Walter E. Rex, Esq., register of wills and *ex officio* clerk of said orphans' court, whose name is thereto subscribed and seal of said court affixed, are in due form and made by the proper officer.

In testimony whereof I have hereunto set my hand this 10th day of May, in the year of our Lord one thousand eight hundred and eighty-four.

WILLIAM B. HANNA,
Presiding Judge. [L. S.]

STATE OF PENNSYLVANIA, } ss:
Philadelphia County, }

I, Walter E. Rex, Esq., register of wills and *ex officio* clerk of the orphans' court of Philadelphia county, do certify that the
113 Honorable William B. Hanna, by whom the foregoing attestation was made and who has thereunto subscribed his

name, was at the time of making thereof and still is president judge of the orphans' court of Philadelphia county, duly commissioned and sworn, to all whose acts as such full faith and credit are and ought to be given as well in courts of judicature as elsewhere.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court this 10th day of May, in the year of our Lord one thousand eight hundred and eighty-four.

WALTER E. REX,

[L. S.] *Register of Wills and ex Officio Clerk of Orphans' Court.*

Sub. ad Resp., Returnable Sept. 10, *A. D.* 1884.

NEW JERSEY, *To wit:*

The State of New Jersey to Henry Hayes, as administrator of all and singular the goods, chattels, and credits of George [L. S.] Hayes, deceased, in the State of New Jersey, left unadministered by Jabez W. Hayes, deceased, Greeting:

We command you that you personally appear before our chancellor in our court of chancery on the tenth day of September next, at Trenton, to answer to a bill of complaint exhibited against you in our said court by Dundas T. Pratt, succeeding executor of the last will and testament of George Hayes, late of the city and county of Philadelphia, in the State of Pennsylvania, deceased, and 114 The Hayes Mechanics' Home, complainants, and to do further and receive what our said court shall have considered in that behalf; and this you are not to omit under the penalty of five hundred dollars.

Witness his honor Theodore Runyon, chancellor of our said State, at Trenton, the eleventh day of August, in the year of our Lord one thousand eight hundred and eighty-four.

G. S. DURYEE, *Clerk.*

JOHN R. EMERY, *Sol'r.*

NOTE.—The defendant is not required to appear at Trenton in person at the return day, but if he intends to make a defence it is only necessary for him to answer, plead, or demur to the bill within the time required by law.

Served August 29, 1884.

WM. WRIGHT, *Sheriff,*
By CYRUS BENEDICT,
Under Sheriff.

Petition for Removal. Filed October 31, 1884.

The petition of Henry Hayes, of the city of Newark and State of New Jersey, respectfully shows that the above-stated cause was begun by bill filed in August last and is not yet at issue.

That your petitioner is the sole defendant in said cause and now is and was at the time of said suit a citizen of the State of New

Jersey, residing in the city of Newark and county of Essex, in said State.

That the complainant Dundas T. Pratt now is and was
115 at the time of the commencement of this suit a citizen of the State of Pennsylvania, residing in the city and county of Philadelphia, in said State.

That the said suit is a suit of a civil nature, in which the matter in dispute is the sum of five thousand one hundred and fifty-three dollars and twenty-seven cents, besides interest, so that the matter in dispute in said cause exceeds, exclusive of costs, the sum or value of five hundred dollars, and the complainant and defendant are citizens of different States.

That no special or other bill was originally requisite in said cause, and none had been given.

That your petitioner desires to remove his suit from this court into the United States circuit court for the district of New Jersey, in and for the third circuit, in pursuance of the provisions of an act of Congress passed March 3rd, 1875.

That your petitioner makes and files herewith a bond, with good and sufficient sureties, for his doing all acts and things required by law to be done on the removal of a cause from a State court to the circuit court of the United States.

Wherefore your petitioner prays that this court accept said petition and bond, and that this suit be removed into the circuit court of the United States to be held in the district of New Jersey, in the third circuit, and that this court proceed no further in this suit.

A. Q. KEASBEY & SONS,
Sol'rs for Henry Hayes, Ad't'r.

116 STATE OF NEW JERSEY, *County of Essex,* } ss:

Henry Hayes, the petitioner above named, of full age, being duly sworn, upon his oath saith that the above petition is true, to the best of his knowledge and belief.

HENRY HAYES.

Sworn and subscribed to before me this 30th day of October, 1884.

JARED HAINES, *M. C. C.*

Bond on Removal. Filed Oct. 31, 1884.

We, Henry Hayes, administrator *de bonis non* of George Hayes, deceased, of the county of Essex and State of New Jersey, and Charles Hayes, of the county of Essex and State of New Jersey, as surety, are held and firmly bound unto Dundas T. Pratt, executor of George Hayes, deceased, of the city and county of Philadelphia and State of Pennsylvania, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said Dundas T. Pratt, executor as aforesaid, his successors or assigns; for which payment, well and truly to be made, we hereby bind our-

selves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated the thirtieth day of October, eighteen hundred and eighty-four.

Whereas a suit was brought on or about the eleventh day
117 of August, eighteen hundred and eighty-four, in the court of chancery of the State of New Jersey, by the said Dundas T. Pratt, executor as aforesaid, against the said Henry Hayes, administrator as aforesaid, and the same is now pending in said court and is removable into the circuit court of the United States for the district of New Jersey, in the third circuit, under the act of Congress, approved March third, eighteen hundred and seventy-five, entitled "An act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from State courts, and for other purposes;"

And whereas the said Henry Hayes, administrator as aforesaid, is about to file his petition in said court of chancery of the State of New Jersey for the removal of said suit into the next circuit court of the United States to be held in the district of New Jersey:

Now, therefore, the condition of the above obligation is such that if the above-bounden Henry Hayes, administrator as aforesaid, or his legal representative shall enter or cause to be entered in the circuit court of the United States for the district of New Jersey on the first day of its stated session next ensuing after the filing of said petition and this obligation in said court of chancery of the State of New Jersey a copy of the record in said suit and shall pay all costs that may be awarded by the said circuit court if the said circuit court shall hold that this suit has been wrongfully or improperly removed thereto, and shall do or cause to be done such other
118 appropriate acts as by the said act of Congress approved March third, eighteen hundred and seventy-five, are required to be done upon the removal of a suit into the United States circuit court, then the obligation to be void; otherwise to remain in full force and virtue.

HENRY HAYES. [L. S.]
CHARLES HAYES. [L. S.]

Witness:
JARED HAINES.

STATE OF NEW JERSEY, *County of Essex*, } *ss:*

Charles Hayes, the surety in the foregoing obligation named, being duly sworn, deposes and says that he is a resident and freeholder in the State of New Jersey and is worth the sum of five hundred dollars over all his just debts and liabilities and exclusive of property exempt by law from execution.

CHARLES HAYES.

Subscribed and sworn to before me this thirtieth day of October, 1884.

In witness whereof I have set my hand this thirtieth day of October, A. D. 1884.

JARED HAINES,
Master in Chancery of N. J.

This bond is approved Oct. 31, 1884.

THEODORE RUNYON, *C.*

Recorded in vol. E, pages 369, &c.

I, George S. Duryee, clerk of the court of chancery of the State of New Jersey, the same being a court of record, do hereby certify that the foregoing is a true transcript of the bill for
119 relief, exemplified copy of will and probate of George Hayes, deceased, *sub. ad resp.*, petition for removal to the circuit court
[L. S.] of the United States, and bond on removal in the cause wherein Dundas T. Pratt, executor of George Hayes, deceased, is complainant and Henry Hayes, administrator *de bonis non* of George Hayes, deceased, is defendant, now on the files of my office.

In testimony whereof I have hereto set my hand and affixed the seal of said court, at Trenton, this twenty-fifth day of November, A. D. eighteen hundred and eighty-four.

G. S. DURYEE, *Clerk.*

I, Theodore Runyon, chancellor of the State of New Jersey, do hereby certify that George S. Duryee, whose name is subscrined to the above certificate, was at the date thereof and now is the clerk of the court of chancery of the State of New Jersey; that said attestation is in due form; that the seal thereto annexed is the seal of said court, and that the signature of the said George S. Duryee is in his own proper handwriting.

Witness my hand, at the city of Trenton, this twenty-fifth day of November, A. D. eighteen hundred and eighty-four.

THEODORE RUNYON, *C.*

120 (Endorsed:) In chancery of New Jersey. Between Dundas T. Pratt, executor of George Hayes, deceased, complainant, and Henry Hayes, administrator *de bonis non* of George Hayes, deceased, defendant. Transcript. Filed Dec. 8, 1884. S. D. Oliphant, clerk.

121 U. S. Circuit Court, District of New Jersey. In Equity.

DUNDAS T. PRATT, Ex'c'r of Geo. Hayes, & *al.*
vs.
HENRY HAYES, Adm'r of Geo. Hayes, Dec'd.

And now, Oct. 28, 1887, this case having been heard upon the bill, answer, and proof and the arguments of counsel of the parties respectively, it is now ordered, adjudged, and decreed that the respondent, Henry Hayes, administrator of the estate of George Hayes, in the State of New Jersey, pay to the complainant Dundas T. Pratt,

treasurer of the Hayes Mechanics' Home, a corporation of the State of Pennsylvania, and for and — behalf of said corporation, the sum of five thousand one hundred and fifty-three dollars twenty-seven cts. ($5,153.27), with interest from January 10, 1884, being the balance in his hands, as administrator aforesaid, on settlement of his account in the orphans' court of Essex county, New Jersey, and that the said respondent also pay the complainants' costs and charges herein to be taxed by the clerk.

By the court:

W. McKENNAN, *Cir. J.*

(Endorsed:) United States circuit court, district of New Jersey. In equity. Dundas T. Pratt, ex'r of Geo. Hayes, & *al. vs.* Henry Hayes, adm'r, &c. Final decree. Filed October 28, 1887. S. D. Oliphant, clerk.

122 UNITED STATES OF AMERICA, *District of New Jersey*, } *ss:*

I, S. D. Oliphant, clerk of the circuit court of the United States in and for the district of New Jersey, do hereby certify the foregoing to be a true transcript of the record and proceedings had in the case of Dundas T. Pratt, executor of George Hayes, deceased, and the Hayes Mechanics' Home, complainants, and Henry Hayes, administrator of George Hayes, deceased, defendant, as fully as the same remain on file and of record in said case in my office.

The Seal of the U. S. Circuit Court, Dist. of New Jersey.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office in Trenton, in said district, this twelfth day of October, in the year of our Lord eighteen hundred and eighty-eight.

S. D. OLIPHANT, *Clerk.*

Endorsed on cover: New Jersey C. C. U. S. No. 246. Henry Hayes, administrator of George Hayes, deceased, appellant, *vs.* Dundas T. Pratt, executor of George Hayes, deceased, and the Hayes Mechanics' Home. Filed October 15, 1888.

AMENDMENT OF RECORD.

BEING EXHIBITS PRINTED BY STIPULATION.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 246.

HENRY HAYES, ADMR. OF GEORGE HAYES, DECEASED, APPELLANT,

vs.

DUNDAS T. PRATT, EX. OF GEORGE HAYES, DECEASED, AND THE HAYES MECHANICS' HOME.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

United States Supreme Court.

OCTOBER TERM, 1888.

HENRY HAYES, ADMR. OF GEORGE HAYES, DECEASED, *Appellant,* AND DUNDAS T. PRATT, EXR. OF GEORGE HAYES, DECEASED, ET AL, *Appellees.*	*On Appeal from Decree of U. S. Circuit Court, District of N. J.*

Stipulation.

It is hereby stipulated and agreed that the record returned in the above cause by the clerk of the Circuit Court may be amended and completed, at any time before the argument of the cause, by adding thereto copies of the exhibits on both sides, which are merely stated and referred to in the record, and also copies of the exemplified copy of probate of will and letters testamentary to the appellee, Dundas T. Pratt, and the opinion of the Circuit Judge, if any be filed, and on five days' notice to amend and complete the record in any other respect at any time before argument.

Dated April 16, 1889.

A. Q. KEASBEY,
Attorney of Appellant.
JOHN R. EMERY,
Counsel for Appellees.

Exhibits printed pursuant to foregoing stipulation:
Exhibits for complainants below:

Exhibit No. 1, for Complainants.

Record, page 22.

To the Honorable, the Judges of the Orphans' Court of the County of Philadelphia:

The petition of the Hayes Mechanics' Home respectfully represents, that George Hayes, late of the city of Philadelphia, died in the year 1857 seized in his demesne as of fee of and in the following described real estate, to wit, all that certain three-story brick messuage or tenement and lot or piece of ground, situate on the east side of Sixteenth street, &c., and also a tract of land situate in the State of Michigan, to wit, fractional section number five, in township number eight, north of range number fourteen west, containing six hundred and thirty-nine acres and fifty-eight hundredths of an acre.

That the said George Hayes by his last will and testament, since his decease duly proved before the Register of Philadelphia, on the 23d day of June, 1857, after bequeathing divers, legacies devised as follows, to wit: "Item. As to the rest, residue and remainder of my estate, both real and personal, and of every nature and kind whatsoever, I give, devise and bequeath the same to my executors hereinafter named, their heirs, executors and administrators forever in trust, to realize the same in the manner deemed by them the most advisable, and keep the same invested in such manner as they, in their discretion, may deem most advantageous, and to appropriate and use the principal or income thereof for the purpose of founding and supporting or uniting in the support of any institution that may be then founded to furnish a retreat and home for disabled or aged and infirm and deserving American mechanics. Item. To better enable my said executors to carry out and perfect my intentions as expressed in the last aforegoing item, I authorize and empower them to sell all or any of my real

estate either at public or private sale, either for cash or part cash, and reserving ground rent or taking mortgage for the purchase money as the case may be, without any liability of the purchaser or purchasers thereof as to the application or misapplication of the purchase or consideration moneys."

That on the 23d day of June, 1857, letters testamentary were duly granted unto Lewis E. Wells, one of the executors named in the last will and testament of the said George Hayes, deceased, who took upon himself the execution thereof. That the said Lewis E. Wells, executor as aforesaid, duly settled his account of the administration of the personal estate of the said decedent, and after payment of all the debts of the said decedent, and of the legacies given by his said will in pursuance of the decree of this Honorable Court, paid over to your petitioners the balance of the personal estate in his hands, amounting to $\$14{,}728\frac{68}{100}$.

That your petitioners were duly incorporated for the purpose of carrying into effect the charitable object indicated in the residuary clause of the will of the said George Hayes, deceased, and by act of Assembly of this Commonwealth, passed the 16th day of March, 1861, were empowered to take and hold the real and personal estate devised and bequeathed by the said George Hayes, deceased, for the purpose aforesaid. That your petitioners are entitled to receive the proceeds of the real estate of the said George Hayes, deceased, when sold by his executors, and are desirous that instead of making sale of the said real estate the legal title to the same may be conveyed to them, to hold for the purpose designated in the said act. They, therefore, pray your Honors, inasmuch as the further execution of the said trust by the said executor has been useless, that you will make a decree, he convey to your petitioners the legal title to the said real estate. And they will ever pray, &c.

FER'D J. DREER,
President.

Ferdinand J. Dreer, president of the Hayes Mechanics' Home, being duly sworn, saith that the facts set forth in the foregoing petition are true to the best of his knowledge and belief.

FER'D J. DREER.

Sworn and subscribed before me, this thirty-first day of May, A.D. 1864.

JAMES MCCAHEN,
Aldn.

June 17, 1864. Petition presented and referred to H. E. Wallace, Esq., as examiner.

COUNTY OF PHILADELPHIA, *ss.:*

[SEAL.] I certify, that at an Orphans' Court, for the county aforesaid, held at Philadelphia on the seventeenth day of June, A.D. one thousand eight hundred and sixty-four, before the Honorable Oswald Thompson, LL.D., president and Associate Justices of said Court.

IN THE MATTER OF THE ESTATE OF
GEORGE HAYES, DECEASED.

The Court referred the petition of the Hayes Mechanics' Home to Henry E. Wallace, Esq., to report, &c.

Witness my hand and seal of the said Court, this first day of July, A.D. one thousand eight hundred and sixty-four.

R. M. BATTURS,
Dep. Clerk of Orphans' Court.

H. E. Wallace, being duly sworn according to law, says he will perform the duty of the above appointment with fidelity.

H. E. WALLACE.

Sworn and subscribed before me, this first day of July, A.D. 1864.

R. M. BATTURS,
Dep. Clerk of Orphans' Court.

To the Honorable the Judges of the Orphans' Court of the City and County of Philadelphia:

ESTATE OF GEORGE HAYES, DECEASED.

The undersigned, examiner, appointed by your Honorable Court to examine and report upon the annexed petition of "The Hayes Mechanics' Home," of the city of Philadelphia, respectfully reports that having been duly qualified as appears by the annexed certificate, he did on the nineteenth day of September, A.D. 1864, at his office No. 128 South Sixth street, in the city of Philadelphia, at 4 o'clock P.M., proceed to the performance of the duties of his said appointment, when and where he was attended by Frederick C. Brightly, Esq., of counsel for said petitioners, and by Lewis E. Wells, executor of the last will and testament of said decedent, pursuant to notice.

And your examiner, upon inquiry and the production before him of the deeds and other papers relating to the matters to be inquired into and reported upon, found that all the statements of the annexed petition are true, and that "The Hayes Mechanics' Home" is a corporation and body politic, by virtue of the act of Assembly of the Commonwealth of Pennsylvania, approved the sixteenth day of March, A.D. 1861, and is entitled under the will of said George Hayes, deceased, to the entire proceeds of the said real estate, when the same should be sold by said executor under said recited provision of said will; and your examiner recommends respectfully to your Honors, that the said prayer of the petitioners be granted, upon the condition that the said executor, Lewis E. Wells, be paid the usual commission and the expenses of this proceeding.

From the evidences produced before him, your examiner reports the value of said real estate described in said petition as follows, viz.:

1. The three-story brick messuage and lot or piece of ground, situate on the east side of Sixteenth street, 162 feet 6 inches north of Spruce street, 26 feet in front or breadth

and 66 feet depth, with the lot adjoining, situate on Ritner street, 66 feet east of Sixteenth, 22 feet in front by 150 feet in depth, at the price or sum of twelve thousand dollars, $12,000.

2. The tract of land in the State of Michigan, being fractional section No. 5, in township No. 8, north of range No. 14 west, and containing six hundred and thirty-nine acres and fifty-eight hundredths of an acre, at the price or sum of five thousand dollars, making together the sum of seventeen thousand dollars.

It is proper to state that sometime in August, 1863, a petition of like import was presented and referred to your examiner, who duly reported as above in writing, but by some mischance that petition and report were mislaid, and the present petition and reference necessitated.

The commissions of the executor and expenses of this proceeding are as follows, viz.:

Commission 5 per cent. on $17,000	$850 00
Counsel fee, F. C. Brightly, Esq.	100 00
Expenses of former report	120 00
Fee of Examiner	100 00
	$1,170 00

All of which is respectfully submitted by

H. E. Wallace,
Examiner.

In the matter of the Estate of George Hayes, deceased. } *O. C.*

And now, September 23, 1864, on consideration of the report of the auditor in this case, it is ordered and decreed that Lewis E. Wells, executor of the last will and testament of George Hayes, deceased, do convey unto "The Hayes Mechanics' Home," in fee, the real estate of the said George Hayes, deceased, described in the said report, upon payment to him of the sum of eleven hundred and seventy dollars, for his compensation as executor and for the costs of this proceeding.

COUNTY OF PHILADELPHIA, *ss.:*

I certify the foregoing to be a true copy of the original petition of "The Hayes Mechanics' Home," the report of the examiner and the decree of the Orphans' Court hereon, as full and entire as the same appear of record in the office of the clerk of said Court.

[SEAL.] Witness my hand and seal of said Court, this eighth day of Septemher, A.D. 1871.

JOSEPH C. TITTERMARY,
Clerk of Orphans' Court.

Exhibit No. 2, for Complainants.

Record, page 22.

The original charter is part of Exhibit No. 4, and is printed below in that exhibit.

Exhibit No. 3, for Complainants.

Record, page 23.

An Act to ratify the Charter of the Hayes Mechanics' Home.

Whereas, Ferdinand J. Dreer, George W. Simons, Samuel Sears, Dundas T. Pratt, James E. Caldwell, Frederick C. Brightly, Lewis E. Wells and James D. Anderson, were, on the twenty-first day of June, one thousand eight hundred and fifty-eight, incorporated under the name, style and title of the Hayes Mechanics' Home, for the purpose of founding a home for disabled, aged or infirm and deserving American mechanics, and with the intention of carrying into effect the charitable objects provided for by the last will and testament of George Hayes, deceased, late of the city of Philadelphia, at the instance of the said Lewis C. Wells, the acting executor of the said George Hayes, deceased; and whereas, the said corporation are desirous that their charter should be ratified and confirmed by an act of the General Assembly, therefore,

SECTION 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by the authority of the same, that the charter of the said The Hayes Mechanics' Home as enrolled in the office of the Secretary of the Commonwealth, in charter book, volume number twenty-eight, pages ninety, ninety-one and ninety-two, be and the same is hereby confirmed and ratified; and that the incorporators therein named shall be and constitute a corporation or body politic in law in accordance with the terms of the said charter, and that the said corporation shall have power to take and hold the real and personal estate devised and bequeathed by the said last will and testament of the said George Hayes, deceased, for the purpose of founding and supporting or uniting in the support of any institution that may then be founded to furnish a retreat and home for

disabled or aged and infirm and deserving American mechanics.

ELISHA W. DAVIS,
Speaker of the House of Reps.

ROBT. M. PALMER,
Speaker of the Senate.

Approved the 16th day of March, Anno Domini one thousand eight hundred and sixty-one.

A. G. CURTIN.

Exhibit No. 4, for Complainants.

CONSTITUTION OF "THE HAYES MECHANICS' HOME."

The subscribers, citizens of the Commonwealth of Pennsylvania, being desirous to acquire and enjoy the powers and immunities of a corporation, for the purpose of founding a home for disabled, aged or infirm and deserving American mechanics, have adopted the following articles for their government:

ARTICLE I.

The name, style and title of this corporation shall be "The Hayes Mechanics' Home." Its object shall be the founding and providing of a retreat and home for disabled, aged or infirm and deserving American mechanics.

ARTICLE II.

The affairs of the corporation shall be conducted by a board of five managers, who shall be all resident citizens of the Commonwealth of Pennsylvania, and shall be elected at the annual meeting, to be held on the first Monday of May, in every year, in such manner as shall be prescribed by the by-laws. Vacancies in the board may be filled by the remaining managers for the unexpired term.

ARTICLE III.

The officers of this corporation shall be a president, secretary and treasurer, who shall be elected annually by the board of managers, at such time and in such manner, and shall perform such duties as the by-laws shall prescribe. The board of managers shall have power to fill vacancies in the said offices, for the unexpired term.

ARTICLE IV.

The number of corporators shall never exceed fifteen, nor be less than five. Citizens of the Commonwealth of Pennsylvania sha l be admitted as members of the said corporation at such times and upon such conditions as shall be prescribed by the by-laws. If the number of corporators shall be reduced to less than five the remaining members

shall have power to meet and elect new members of the corporation.

ARTICLE V.

There shall be an annual meeting of the said corporators on the first Monday of May. Special meetings may be called by the president whenever the interests of the corporation shall make it expedient.

ARTICLE VI.

The subscribers and their successors shall be and become a corporation or body politic in law and in fact, to have continuance by the corporate name aforesaid, and shall have full power and authority to make, have and use one common seal, with such device and inscription as they shall judge proper, and the same to break, alter and renew at their pleasure; and by the corporate name aforesaid, shall be capable in law to sue and to be sued, plead and to be impleaded in any court or courts, before any judge or judges, justice or justices, in all manner of suits, complaints, pleas, causes, matters and demands whatsoever, and all and every matter or thing, therein to do, in as full and effectual a manner as any other person or persons, bodies politic and corporate, within this commonwealth may or can do; and shall be authorized and empowered to make rules, by-laws and ordinances, and to do everything needful for the good government and support of the affairs of the said corporation. *Provided always*, That the said by-laws, rules and ordinances, or any of them, be not repugnant to the constitution and laws of the United States, to the constitution and laws of this commonwealth, or to the present instrument.

ARTICLE VII.

The said corporators and their successors, being citizens of this commonwealth, by the corporate name, style and title aforesaid, shall be able and capable in law, according to the terms and conditions of this instrument, to take, receive and hold all manner of lands, tenements, rents, annuities, franchises and hereditaments, and any sum and sums

of money, and any manner and portion of goods and chattels given and bequeathed unto them, to be employed and disposed of according to the objects, articles and conditions of this instrument, the articles and by-laws of this corporation, and the will and intention of the donors. *Provided*, That the clear yearly value or income of the real and personal estate, held by the said corporation shall not at any time exceed the sum of five thousand dollars.

ARTICLE VIII.

The funds of this corporation shall be applied to the founding, establishing and supporting a home and retreat for disabled, aged or infirm and deserving American mechanics, who shall be admitted to the benefits and advantages thereof, in such manner and upon such terms and conditions, and under such regulations as shall be prescribed by the by-laws.

ARTICLE IX.

The following named persons shall constitute the first Board of Managers of the said corporation, namely: Ferdinand J. Dreer, Lewis E. Wells, Samuel Sears, James D. Anderson and Dundas T. Pratt.

OFFICE OF THE ATTORNEY GENERAL.

I hereby certify that I have perused and examined the within articles of association of The Hayes Mechanics' Home, and am of the opinion that the objects, articles and conditions therein contained are lawful.

JOHN C. KNOX.

Philadelphia, 3d May, A.D. 1858.

We, the Justices of the Supreme Court of Pennsylvania, do certify that we have examined and perused the within instrument of writing, and concur with the Attorney-General in the opinion that the objects, articles and conditions therein set forth and contained, are lawful, and it is ordered by the Court, that the yearly income of the said corporation, other than from real estate, be limited to the sum of two thousand dollars ($2,000).

Witness our hands, at Harrisburg, this eighteenth day of May, Anno Domino 1858.

W. H. Lowrie.
Geo. W. Woodward.
James Thompson.
Wm. A. Porter.

I, William H. Miller, Prothonotary of the Supreme Court of Pennsylvania, for the Middle District, do certify that the within instrument of writing was presented to the Justices of the Supreme Court of Pennsylvania, and was by them duly allowed, as appears by their above certificates.

[seal.] In testimony whereof I have hereunto subscribed my name and affixed the seal of the said Supreme Court at Harrisburg, this eighteenth day of May, Anno Domino 1858.

Wm. H. Miller,
Proth'y Sup. Ct., M. D.

Executive Chamber,
Harrisburg, June 21, 1858.

To Wm. M. Heister, Esq., Secretary of the Commonwealth:

Sir—Let the above foregoing instrument of writing be enrolled according to law.

Wm. F. Packer.

Secretary's Office,

Pennsylvania, *ss.:*

Enrolled in Charter Book, vol. No. 8, pages 90, 91 and 92.

In testimony whereof I have hereunto set my hand, and caused the seal of the secretary's office to be affixed hereto, at Harrisburg, this twenty-first day of June, in the year of

our Lord one thousand eight hundred and fifty-eight, and of the Commonwealth the eighty-second.

[SEAL.] WM. M. HEISTER,
Secretary of the Commonwealth.

BY-LAWS.

1. All elections held under the charter shall be by ballot.

2. The president shall preside at all meetings of the board of managers, or, in his absence, one of the board shall preside, who shall be designated by those of the board present at the meeting. It shall be the duty of the president to call a meeting of the board of managers, at least once in six months, and at other times, when requested by a majority of the board of managers. He shall sign all warrants upon the treasurer, ordered to be drawn by the board of managers, for payment of debts due by the corporation, to be countersigned by the secretary, and shall make an annual report of all things which may be of interest to the corporators.

3. The secretary shall keep a record of all the proceedings of the corporation; he shall examine, file away and keep all bills and papers relating thereto; and shall countersign all orders on the treasurer, directed by the board of managers; and do and perform generally such matters and things as the by-laws of the corporation may from time to time direct and appoint.

4. The treasurer shall be the custodian of all moneys paid to the corporation, and shall liquidate all demands upon the same, upon orders directed to be drawn by the board of managers, and countersigned by the president and secretary. He shall, if required by the board of managers, give security for the faithful performance of his office, in such amount as the board may direct.

5. Corporators may be chosen and elected by the unanimous vote of the board of managers, from time to time, whenever the full number provided for by the charter shall not be complete.

Exhibit No. 5, for Complainants.

Record, page 23.

The following is abstract of this exhibit, and it is expressly stipulated that, if necessary, the exhibit in full may be printed for the use of the Court:

Deed dated November 7th, 1864, between Lewis E. Wells, executor of the last will and testament of George Hayes, late of the city of Philadelphia, deceased, of one part, and "The Hayes Mechanics' Home," of the other part, reciting the seizing of said George Hayes, in fee, at his death, of a house and lot on the east side of Sixteenth street, in the city of Philadelphia, and particularly describing the same, and also of a lot on the south side of Ritner street in said city, also particularly describing the same, reciting also the provisions of the will of said George Hayes, being the two last items of the will appearing on the record at page 11, relating to the residue of his estate, and reciting also the incorporation of "The Hayes Mechanics' Home," on June 21st, 1858, and the act of the General Assembly of the Commonwealth of Pennsylvania ratifying the charter passed March 16th, 1861, and the petition of "The Hayes Mechanics' Home," June 17th, 1864, to the Orphans' Court of the County of Philadelphia, and the order of the Court made thereon, September 23d, 1864, as appears by Exhibit No. 1 (in this case).

The indenture after these recitals then witnesses that the said Lewis E. Wells, executor as aforesaid, in pursuance of the said decree and in consideration of the sum of eleven hundred and seventy dollars and the further sum of one dollar paid to him by "The Hayes Mechanics' Home," grants, bargains, sells and conveys unto "The Hayes Mechanics' Home" the said two lots and tracts of land and all the estate which George Hayes had in the same, to have and to hold the same unto "The Hayes Mechanics' Home," their successors and assigns to and for the proper use and behoof of "The Hayes Mechanics' Home," its successors and assigns forever; and also includes covenants against

personal acts of the grantor, and is signed by the grantor, Lewis E. Wells, and duly acknowledged before John White, alderman, on November 7th, 1864, and recorded in the office for recording deeds in and for the county of Philadelphia, in Deed Book G. R. B. No. 55, page 265, &c.

Exhibit No. 6, for Complainants.
Record, page 24.

The following is abstract of his exhibit and it is also stipulated that the original exhibit may be printed if necessary:

Deed dated November 7th, 1864, between Lewis E. Wells, executor of the last will and testament of George Hayes, late of Philadelphia, deceased, of one part, and "The Hayes Mechanics' Home," of the other part, reciting the seizing in fee, by George Hayes, in his lifetime and at his death, of a tract of land situate in the State of Michigan, and particularly described, and making also the same recitals as are above stated in reference to Exhibit No. 5, after which recitals the deed witnesses that the said Lewis E. Wells, executor, in pursuance to the said decree of the Orphans' Court and in consideration of eleven hundred and seventy dollars and also one dollar to him paid of "The Hayes Mechanics' Home," did grant, bargain, sell and convey "The Hayes Mechanics' Home" the said piece of land situate in the State of Michigan, as described in fee simple to the use and behoof of "The Hayes Mechanics' Home," their successors and assigns forever, with also the same covenants against the personal acts of Lewis E. Wells. This deed was signed in the presence of two witnesses and acknowledged November 9th, 1864, before Edward Shippen, a commissioner of the State of Michigan, and recorded in Ottawa County Register's office on November 16th, 1864, in Book H. of Deeds, pages 523, &c.

Exhibit No. 12, for Complainants.

Record, page 31.

The assets of the Hayes Mechanics' Home were as follows at the dates mentioned, to wit:

1864, May, the executor of George Hayes' estate handed over, beside real estate in city and in Michigan, the sum of	$13,789 93
1865, May, the sum of	14,077 97
1866, May, the sum of	14,561 11
1867, May, the sum of (house and lot in city sold, and included)	29,141 49
1868, May, the sum of	30,225 85
1869, May, the sum of	31,341 41
1870, May, the sum of	32,575 54
1871, May, the sum of	33,258 87
1872, May, the sum of	35,222 87
1873, May, the sum of (including a legacy)	46,976 17
1874, May, the sum of	48,550 00
1875, May, the sum of (including a legacy)	52,809 30
1876, May, the sum of	58,579 35
1877, May, the sum of	61,365 08
1878, May, the sum of	64,619 54
1879, May, the sum of	67,667 08
1880, May, the sum of	70,204 75
1881, May, the sum of	72,790 14
1883, May, the sum of (including a gift of $9,500)	88,814 00
1884, May, the sum of (cash assets at cost, and cost of Belmont lot)	92,672 32

E. Noe.

Philadelphia, August 7, 1884.

I certify the above to be a correct statement.

D. T. Pratt,

Secretary of Hayes Mechanics' Home.

Defendant's Exhibit No. 4.

NEWARK, N. J., October 5th, 1883.

A regular meeting of the Board of Trustees was held this evening at Grace Church rooms, Rev. Mr. Christian in the chair, with the following gentlemen present:

Rev. Messrs. Goodwin, Roberts and Messrs. Dodd, Dr. Mercer, Ward, Jackson, Toppin, Speiden, Keasbey, Young, Richards and Rev. Messrs. Bishop and Richardson.

The treasurer's report was read and accepted.

Mr. Keasbey read an abstract from the will of George Hayes, of Philadelphia. Also a letter regarding the same. After debate, the following resolution was offered by Mr. Keasbey:

Resolved, Mr. Henry Hayes, administrator with the will annexed of George Hayes, deceased, having signified his willingness to appropriate to the use of the Hospital of St. Barnabas, a fund of about $3,000, part of the residue of the estate of George Hayes, bequeathed to his executors to be applied to writing in the support of any institution founded to furnish a retreat for disabled, infirm, aged and deserving American mechanics, provided the hospital shall indemnify against any loss or liability by reason of such appropriation and use of said fund.

Resolved, That said fund be accepted and the president be authorized to execute a proper bond of indemnity to Mr. Hayes as suggested by him, and deliver such bond on receipt of the money.

On motion, the whole matter was referred to Mr. Keasbey.

NEWARK, N. J., March 17th, 1884.

A special meeting of the Board of Trustees was held this evening at Grace Church rooms, Rt. Rev. T. A. Starkey in the chair, with the following present:

Rev. Messrs. Stansbury and Christian, and Messrs. Young, Speiden, Mercer, Ward, Keasbey, Richards, Tippel, Connett, Webber, Toppin.

A letter dated March 4th, 1884, was read, from Mr. Henry Hayes, administrator of George Hayes, deceased; the same was read and considered, and on motion, the following resolution was read and adopted:

Resolved, That whereas, Henry Hayes, administrator with the will annexed of George Hayes, proposes to transfer to this institution the fund in his hands belonging to the estate of said George Hayes, and amounting to about five thousand dollars ($5,000), remaining after settlement of his account in the Orphans' Court, which fund is to be solely employed for the purposes mentioned in said will;

Resolved, That the Hospital of St. Barnabas consents to receive said fund, and it hereby agrees to use such fund solely for the purpose of furnishing a retreat and home for disabled or aged and infirm and deserving American mechanics, in accordance with the will of the late George Hayes.

NEWARK, N. J., May 8th, 1884.

A special meeting of the Board of Trustees was held this evening at Grace Church rooms. Present: Rt. Rev. Bishop Starkey, Rev. Messrs. Stansbury, Cranberry, Wood, Bishop, and Messrs. Mercer, Keasbey, Ward, Teese, Darcy, Jackson, Webbe, Ray and Young.

In the absence of the secretary Mr. Young was appointed secretary pro tem.

Mr. Keasbey submitted, for the approval of the trustees, a bond and mortgage to Henry Hayes, administrator of the estate of George Hayes, deceased, whereupon the following resolutions were adopted:

Resolved, That the president and secretary be authorized to execute the bond and mortgage now presented to the board, the bond in the sum of ten thousand dollars ($10,000), the mortgage covering all the hospital property west of the east wall of the new building now in progress, and north of the south line of the property extended to Quitman street, and to deliver the same to Mr. George

Hayes upon securing the fund mentioned in the bond and mortgage to be applied in pursuance of the will of George Hayes.

NEWARK, N. J., November 20th, 1884.

A special meeting of the Board of Trustees was held this evening, Rt. Rev. Bishop Starkey in the chair, with the following gentlemen present:

Rev. Messrs. Stansbury and Bishop, and Messrs. Darcy, Ward, Jackson, Toppin, Speiden, Tipple, Ray and Keasbey.

Mr. Keasbey offered the following preamble and resolution:

Resolved, Henry Hayes, administrator de bonis non of George Hayes, deceased, has lately paid over to the Hospital of St. Barnabas the sum of $5,153.27, pursuant to the provisions of the will of said George Hayes and has taken from said hospital a bond conditioned for the repayment to said Hayes of said sum of money on the contingencies therein mentioned.

And whereas, Said bond has been secured by a mortgage upon property of said hospital, which mortgage the said Hayes is willing to surrender and cancel of record in order that the hospital may obtain a loan of money elsewhere and secure such loan by a first mortgage upon such property, the said Hayes being willing to receive a second mortgage upon the said property and further security hereinafter mentioned.

And whereas, Sarah M. Carman has lately died, bequeathing to the hospital a large sum of money, and the said Hayes is willing that the first moneys received from her estate by said hospital shall be set apart to the amount of $5,153.27, with interest from the date of said bond, to stand as security for the money which he may be liable to pay on any of the contingencies mentioned in said bond, such money so set apart to be invested in such securities as shall be jointly agreed upon by said hospital and said Hayes.

Be it resolved, That the president of the Board of Trustees of said hospital be authorized to make and execute in the presence of the secretary of said board and to deliver to said Hayes a new mortgage securing said bond similar to the one which was heretofore delivered to him upon the cancellation of such last mentioned mortgage; and

Be it further resolved, That out of the first moneys received from the estate of said Sarah M. Carman, there shall be set apart by the treasurer of the board the said amount of $5,153.27, with interest, as aforesaid, for the purpose aforesaid, and said sum shall be invested and reinvested in such securities as shall be jointly agreed upon by said Hayes and this board, and not otherwise.

NEWARK, N. J., July 1st, 1885.

At the annual meeting of the Board of Trustees of the Hospital of St. Barnabas, held June 4th, 1885, the following resolution was adopted:

Whereas, On the 17th day of March, 1884, the trustees of the Hospital of St. Barnabas accepted from the administrator of George Hayes, deceased, formerly of Newark, the sum of $5,153.27, which was the residue of his estate in New Jersey, bequeathed by him to be used for uniting in the support of an institution already founded for the purpose of furnishing a retreat and home for disabled or aged and infirm and deserving American mechanics, and was given to the Hospital of St. Barnabas, in pursuance of the desire and intention of his brother, Jabez W. Hayes, who was the executor of his estate in New Jersey;

And whereas, The new hospital building has been completed since the payment of such bequest to the trustees;

Resolved, That a suitable part of the building be fitted up with two beds to be devoted especially to the purposes mentioned by the testator, and that a tablet be placed upon the walls as an indication of these uses and a memorial of the donor of the fund.

Extracts from the By-Laws of the Board of Trustees of the Hospital of St. Barnabas.

Defendants' Exhibit, No. 1.

September 11, 1885. Record, page 60.

I.—Officers of the Board.

The officers of the Board shall be a President, a first Vice-President, a second Vice-President, a Secretary, and a Treasurer. The last four shall be elected by the Board at its annual meeting, and shall hold office for one year, and until their successors are chosen.

All officers shall be elected by ballot, and it shall require a majority of all the ballots cast to elect.

If a vacancy occur in any office, it may be filled at any regular meeting of the Board.

II.—Lay Members.

The lay members of the Board to be elected shall be nominated by the Rector of the Parish which they are to represent. The term of office of lay members shall be two years, but they shall be eligible for re-election; and each shall serve until a successor be elected. In order that one vacancy for each Parish shall happen in each year, each present lay member, and each new member, as he may be elected, shall be classified by the President, in his discretion, as a member for one year, or for two years, or for a shorter term, as each case may require, in order to secure said result.

VIII.—Election of Committees.

The Board shall elect, at the annual meeting, a Committee of Finance, to consist of two clergymen and three laymen, of whom the Treasurer shall be one; and an Auditing Committee, to consist of two lay members. These committees shall hold office during the year, unless otherwise ordered by the Board. The Committee of Finance also elect a Visiting and Inspecting Committee, to consist shall keep minutes of its proceedings, which shall be read at the regular meetings of the Board. The Board shall

of six trustees, two clergymen, and four laymen, to serve six months; except that of the committee first appointed under this By-Law, two members shall serve for two months, two for four months, and two for six months; and that thereafter two shall be elected at each regular meeting of the Board, in place of the two whose term of service shall then expire. If any Trustee, appointed at any time, be unable to serve, it shall be his duty to procure some other Trustee to attend in his stead.

X.—Of the Visiting and Inspecting Committee.

1. The Visiting and Inspecting Committee shall give such orders and establish such regulations as they shall think proper, to carry into effect the objects of this Institution; provided that such orders and regulations be not inconsistent with those established by the Board of Trustees.

2. Admission shall be allowed by the Sister-in-charge and House-Physician, subject to the approval of the Visiting Committee.

The Sister shall report to them, at each meeting, all admissions, with a statement of the cause of admission, and whether as pay or free patients; and if there be any doubtful case, it shall be referred to this Committee for decision.

3. They shall see that no patient be allowed to remain in the Hospital when in a condition to be discharged; and that all patients whose disease may be incurable, be removed with the least possible delay.

6. They may, at their discretion, discharge any patient or Hospital attendant for disorderly conduct.

8. The Visiting and Inspecting Committee shall have general charge of all property within the precincts of the Hospital. They shall provide ways and means for its support and direct how bills shall be paid. They shall authorize and superintend such repairs and disbursements as may, from time to time, be necessary; such expenditures not to exceed $100 per month, unless by authority of the Board. They may make such arrangements with the Sister-in-

charge, in relation to the management of the Hospital, and employing assistants, as they may deem advisable.

XIII.—Of the Superintendence.

The superintendence and internal management of the Hospital shall be committed to the charge of the Sisterhood of the Order of St. Elizabeth, subject to the rules herein provided.

Extracts from the Rules of the Hospital St. Barnabas.

Defendants' Exhibit, No. 2.

September 11, 1885. Record, page 60.

I.—Concerning Admission.

1. Patients suffering from severe accidents are admitted unconditionally, at any hour of the day or night.

2. Other patients, without regard to sex, color, nationality or creed, are admitted between 10 A. M. and 5 P. M. on any day.

They must apply in person at the Hospital, between 10 A. M. and 1 P. M., when they will be examined by the House Physician.

If unable to apply in person, they will, on application of friends, be visited at their homes by the House Physician.

3. Any member of the medical staff may send to the Hospital such patients as require immediate attention. A written order of admission must accompany each case.

4. No person suffering from any contagious disease can be admitted.

5. Application for the admission of a patient who lives out of the city of Newark must be accompanied by a certificate of some respectable physician, stating the nature and the probable duration of the disease.

6. Patients who are *able* to pay for their maintenance will be charged *six dollars a week;* in special cases reduced rates may be agreed upon.

7. Private patents will be charged twelve dollars a week, and upward, according to the amount of care required.

II.—Conduct of Patients.

8. Patients on being admitted to the Hospital become members of a Christian household; they are expected to conduct themselves with propriety; they must not indulge in loud or boisterous talking, nor use any profane or indecent language, nor express infidel or immoral sentiments, nor play any game for money, nor smoke tobacco in the house, nor procure any intoxicating liquors, nor have with them any immoral or indecent book, pamphlet or newspaper.

9. Patients must, if possible, bring clothing sufficient for healthful change, and no more; trunks or packages of needless personal effects cannot be received. All the clothing is the charge of the Sisters.

10. Money brought by the patients must be delivered to the Sister, who will give her receipt for it, if desired, and will refund it when the patient shall be discharged.

11. At the death of patients who were maintained at the expense of the Hospital, their clothing and other personal effects become the property of the institution.

It is also agreed that counsel for either party may, if they desire, refer in their briefs to any other by-law or sale appearing in the original exhibits, which are to be produced at the argument, for verification of rules or by-laws thus referred to, if necessary.

Defendants' Exhibit, No. 1.

July 17, 1885. Record, page 37.

ESSEX COUNTY SURROGATE'S OFFICE.

To all to whom these presents shall come, Greeting:

Whereas, George Hayes, late of the city of Philadelphia, in the state of Pennsylvania, departed this life having made and executed a last will and testament, an exemplified copy of which has been duly proved, according to law, before the surrogate of the county of Essex; and whereas, Jabez W. Hayes, after having taken upon himself the execution of said will in this state, has departed this life, that due notice has been given of this application to Dundas Pratt, the only other surviving executor named in said will, and to all other parties in interest: Therefore, I, C. Meyer Zulick, surrogate of the county of Essex, do hereby appoint Henry Hayes administrator of all and singular the goods, chattels and credits of the said George Hayes, deceased, in the state of New Jersey, left unadministered by Jabez W. Hayes, deceased, who is duly authorized to administer the same agreeably to said will.

In witness whereof I have hereunto set my hand and seal of office this twelfth day of December, A. D. eighteen hundred and eighty-two.

[SEAL] C. MEYER ZULICK,
Surrogate.

FILED
MAR 21 1892
JAMES H. McKENNEY
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 948.

HENRY HAYES, ADMINISTRATOR OF GEORGE HAYES, DECEASED,

APPELLANT.

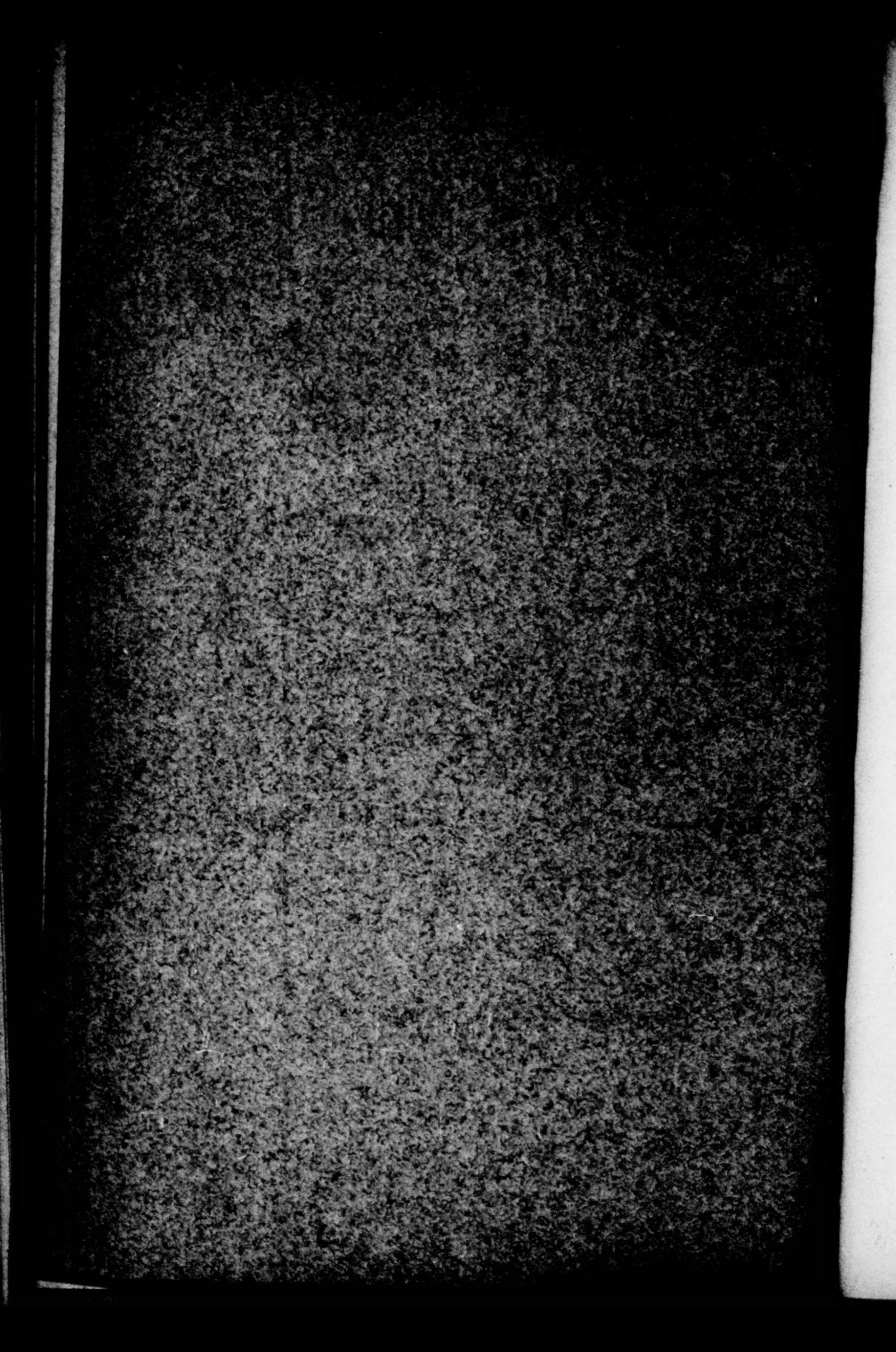
vs.

DUNDAS T. PRATT, EXECUTOR OF GEORGE HAYES, DECEASED.

On Appeal from U.S. Circuit Court for the District of New Jersey.

A. Q. KEASBEY,
Counsel of Appellant.

HOLBROOK PRINTING CO., 11-13 MECHANIC ST., NEWARK.



In the Supreme Court of the United States.

OCTOBER TERM, 1891.

No. 246.

HENRY HAYES, *Adm. of*
GEORGE HAYES, *deceased*,

vs.

DUNDAS T. PRATT, *Executor of*
GEORGE HAYES, *deceased.*

BRIEF FOR APPELLANT.

Statement of the Case.

George Hayes was born in the city of Newark, New Jersey, where his ancestors long had lived, and inherited lands in that city. He was a jeweler and carried on his business on the premises—having also a fourth interest in the homestead of his father. He lived there until 1847,

when for business reasons he removed to Philadelphia, and remained there till his death in June, 1857. He left no children, but his brother, Jabez W. Hayes, and two sisters, all of Newark, survived him. He left certain real and personal estate in Philadelphia, certain real estate in Michigan and the real estate referred to in the city of Newark. He made a will dated June 16th, 1855, appointing Jabez W. Hayes, his brother, and Dr. Lewis E. Wells (and in the event of the death of either or both of them, first, Dundas T. Pratt, of Philadelphia, and, next, his brother-in-law, Horace H. Nichols, to supply vacancy) to be the executors of his will. Thus, one of the two executors lived in New Jersey and one in Philadelphia, and one of the two alternates also lived in New Jersey and one in Philadelphia. He seems to have exercised care in providing that his interests in his native city as well as those in his adopted city should be looked after.

After certain legacies, he devised and bequeathed the residue of his estate to his executors, in trust, "to realize the same in the manner deemed by them most advisable, and to keep the same invested in such manner as they in their discretion might deem most advantageous, and to appropriate and use the income or principal thereof for the purpose of founding and supporting, *or uniting in the support of any institution that may be then founded* to furnish a retreat and home for disabled or aged and infirm and deserving American mechanics."

The will also provided that to better enable his executors to carry out and perfect his intentions so expressed, they were authorized to sell all or any of his real estate at public or private sale.

Lewis E. Wells proved the will in Philadelphia, June 20, 1857.

Jabez W. Hayes proved the will in New Jersey, August 4th, 1857, and took letters testamentary thereon.

It is distinctly proved that Wells, the executor in Philadelphia, was fully aware of the existence of the real estate in New Jersey, and determined that he would take care of the estate in Pennsylvania, and that Jabez W. Hayes, the New Jersey executor, should take care of that in New Jersey.

In pursuance of this arrangement, Jabez W. Hayes took possession of the New Jersey property, and continued to receive the rents during his life time, and although long before his death he formed the design of devoting the principal and income of the property to uniting in the support of the Hospital of Saint Barnabas in Newark, under advice of counsel in the execution of his trust of the will with respect to the New Jersey estate, he was unable to dispose of it in his life time; and having died in January, 1882, his son was, on the 12th of December, 1882, appointed administrator de bonis non; received letters testamentary; took possession and charge of the real estate and the accumulated income thereof under the authority of the Orphans' Court of the county of Essex, and finally sold it; settled his accounts in that court; paid all the expenses and administration—there being no debts, and ascertained by the decree of the court the balance remaining in his hands as executor to be disposed of according to the trusts in the will.

In pursuance of his father's intention and under the advice of counsel, he applied this surplus in March, 1884, amounting to about five thousand dollars, to the purpose of uniting in the support of the Hospital of Saint Barnabas, which formally accepted the trust, and made definite provision for the use of the money in providing a room specially devoted to the purposes of the trust, with two beds for the relief and comfort of aged and infirm or disabled American mechanics.

The whole residue in New Jersey bequeathed by the will to his executors by the testator, passed into the hands of the

only one of the executors who assumed that trust in New Jersey, and has by his successor been disposed of according to the expressed purposes of the testator, and in pursuance of the known wishes of the executor to whom it was devised.

No action has been taken by the Orphans' Court of the County of Essex, under whose authority he acted since the settlement of his accounts. It is not even alleged that that court has exercised any discretion as to the disposition of the residue, or attempted to make any order directing the administrator with the will annexed not to use his own discretion in disposing of it, but to turn it over to the alternative executor in Philadelphia, in order that he may apply it to a similar purpose conceived by the former executors in charge of the Pennsylvania property.

The Pennsylvania executor, Wells, took possession of the real and personal estate in that state, and also the real estate in Michigan, where no executor was appointed. He paid all the debts and legacies, and it is stated in the bill, paragraph 7, that his accounts of the personal estate were settled in the Orphans' Court, and that a balance of about fourteen thousand dollars of the personal estate remained in his hands in trust for the person or persons entitled to the residue of the estate under the said clause of the will; but no copy of such account is in evidence, and there is nothing to show that any direction as to the disposition of such residue was suggested by the executor to the court, or directed by the court itself.

It appears that the executor and the alternative executor, Dundas T. Pratt and Ferdinand J. Dreer, who was the partner of the testator, with other gentlemen, caused the incorporation of an institution known as "The Hayes Mechanics' Home," in June, 1858, which was authorized by an act of the legislature to take and hold real and personal

estate derived through the will of George Hayes, as well as other bequests and contributions of a similar nature.

It also appears that Lewis E. Wells, the executor, paid over to that institution the balance in his hands of the personal estate, less his commissions, amounting to about eleven hundred dollars. The exact amount stated by Mr. Pratt (p. 33) was $13,789.93, paid in May, 1864, some seven years after the death of the testator.

It appears also that about that time a petition was made to the Orphans' Court of the county of Philadelphia by The Hayes Mechanics' Home, setting out that George Hayes died in 1857, seized of certain property in Philadelphia and in Michigan, described in the petition; the devise of the residue to the executor, and the fact that the executor had duly settled his account of the administration of the personal estate, and had paid over the balance in pursuance of the decree of the Orphans' Court to the Hayes Mechanics' Home; that this home was incorporated for the purpose of carrying into effect the object of the will, and had the power to hold the real and personal estate devised and bequeathed to Hayes for the purpose, and asking that the real estate specifically described in the petition in Philadelphia and Michigan, might be conveyed to the home by the executor. It was referred to an examiner, who reported that the facts were true, and that the prayer of the petition ought to be granted. He reported the value of the Philadelphia property as twelve thousand dollars and the Michigan property as five thousand dollars, making together seventeen thousand dollars.

The examiner says: "It is proper to state that some time in August, 1863, a petition of like import was presented and referred to him; that he duly reported as above in writing, but by some mischance that petition and report were mislaid, and the present petition and reference necessitated.

"Thereupon an order was made by the court simply decreeing that Wells, executor, do convey to The Hayes Mechanics' Home in fee, the real estate of George Hayes described in the report, upon payment to him, the executor, of the sum of eleven hundred and seventy dollars for his compensation as executor, and for the costs of the proceeding.

"The former petition referred to in this report has been found, and a certified copy obtained. That petition, after stating the will and the incorporation of the home says: 'That the said Lewis E. Wells, executor as aforesaid, has exhibited in court a full account and statement of the estate of the said George Hayes, deceased, and after payment of all the legacies bequeathed by the will of the said George Hayes, deceased, has, under the decree of this honorable court, paid over to your petitioners the cash balance in his hands, amounting to $14,728.68; and has also assigned and transferred to your petitioners all the other personal assets of said estate; that the purposes for which the said trusts were created by the will of the said George Hayes, deceased, *have been fully executed with the single exception of the sale of his real estate;* that no person but your petitioners has any interest therein, and your petitioners are desirous that the same should not be sold, but that the legal title to the same should be conveyed to them by said executor. Your petitioners, therefore, pray that your honors will decree that the said Lewis E. Wells, the executor as aforesaid, shall convey to your petitioners the legal title of the said real estate whereof the said George Hayes died seized as aforesaid."

No order of the Orphans' Court of Philadelphia, made upon the settlement of the estate, or directing the disposition of the residue of the personal estate has been proved, and upon careful inquiry in the office in Philadelphia no such order can be found.

It appears also (p. 33), that Lewis E. Wells was the treasurer of the Hayes Mechanics' Home, but was removed from his treasurership about 1873, when another treasurer was appointed.

It appears also that although a number of other legacies were given to that home, nothing was done in a practical way towards applying the funds, either of George Hayes' estate, or of others, to the purposes mentioned in the will, until twenty-seven years after the death of Mr. Hayes. Then, and after this suit was begun, the first stone was laid of a building which is now in progress, to be used for the purposes of the will, and for other charitable purposes arising out of other bequests.

The whole estate in the hands of the only executor who proved the will in Pennsylvania, the place of domicile, was disposed of by him, and all his functions were fully performed, and the executor himself died.

Not until the small residue left in the hands of the New Jersey executor arising out of the New Jersey estate, had been actually applied to the purposes of the will by the administrator, *cum testamento annexo*, was any attempt made to revive any testamentary powers in Pennsylvania.

Then in May, 1884, with no assets whatever to administer in Pennsylvania, but only for the purpose of bringing this suit against an administrator in New Jersey, did Dundas T. Pratt, the alternative executor, and an officer of the Hayes Mechanics' Home, apply to the court in Pennsylvania for letters testamentary. He obtained such letters, as he himself states, solely for the purpose of enabling him to pursue the proceeds of the real estate in New Jersey for the benefit of the Hayes Mechanics' Home in Pennsyl-

vania, and in pursuance of that purpose this suit was brought.

This new executor in Pennsylvania does not come into the Orphans' Court of the County of Essex, under whose authority Henry Hayes, administrator, *cum testamento annexo*, has been acting, nor seek from that court the exercise of its discretion in directing its appointed administrator not to distribute the residue according to his own wish or judgment in fulfillment of the trusts of the testator, but to transfer them to the executor in the place of the testator's domicile at the time of his death. No such application as this was made, and, if it had been, we may assume that it would have been refused.

But, instead of this, this new executor, with nothing in his hands to administer in his own state, together with the Hayes Mechanics' Home, brings an ordinary suit in the Court of Chancery of New Jersey, against Henry Hayes, the purpose of which is to claim as of right an account of the amount which this New Jersey officer has received belonging to the estate, and of the balance in his hands, and the payment of the same with interest to the Pennsylvania executor. The terms of the prayer are these: "That an account may be taken of the amount which he, Henry Hayes, administrator, has received belonging to the said estate, and of the balance which remains in his hands, or with which he should be charged for the purposes of said trusts under said will, and that he may be decreed to pay over the same with interest to your orator, Dundas T. Pratt, executor as aforesaid, for the purpose of being administered under said will in the state of Pennsylvania, or that the same may, if this court so direct, be here at once administered under said will, and be at once paid over to your orator, the Hayes Mechanics' Home."

Upon this prayer the Court, without delivering any

opinion, made a decree October 28, 1887, simply adjudging Henry Hayes, the administrator of the estate of George Hayes, pay to the complainant, Dundas T. Pratt, Treasurer of the Hayes Mechanics' Home, a corporation of the State of Pennsylvania, for and on behalf of said corporation, $5,153.27, with interest from January 10th, 1884, being the balance in his hands as administrator as aforesaid on settlement of his account in the Orphans' Court in Essex County, New Jersey; and that the respondent also pay the taxes and charges to be taxed by the Clerk (Record 77).

From this decree this appeal was taken, and it is insisted that the decree is erroneous, and that the action cannot be sustained, either on behalf of the Pennsylvania executor or on behalf of the Hayes Mechanics' Home, the other complainant.

Assignment of Errors.

(1st.) The parties who brought the suit were Mr. Pratt, who after more than twenty years from the closing of the executors' accounts in Philadelphia, took out letters testamentary for the mere purpose of enabling him to obtain this fund, and the Hayes Mechanics' Home, a corporation created under the laws of Pennsylvania. These parties were not properly joined in the suit, and the Hayes Mechanics' Home, in whose favor alone the decree was made, had no right to bring it. The decree of the Court adjudging that the New Jersey administrator shall pay the money to the treasurer of that Home was erroneous.

(2d.) The Court erred in declaring that Dundas T. Pratt, as the succeeding executor, who obtained letters testamentary twenty years after the estate had been fully settled and all the functions of an executor ended in Pennsylvania, had

no right to bring such a suit against the officer regularly administering the affairs of the estate within the jurisdiction of New Jersey, and under the direction of its Probate Courts. He attempted to lay a foundation for such a right by filing a copy of the record of his appointment in Pennsylvania under the act of the Legislature of New Jersey of February 19th, 1879, P. L. 28; but that act gave him no such power, and without express legislative power an executor appointed in one State cannot maintain an action against an executor or administrator appointed in another State to recover any part of the estate which may exist in that State and is wholly under the control of its courts.

(3d.) The decree is erroneous because it assumes that it is the duty of an executor or administrator duly appointed in a State not that of the testator's domicile, after he has paid the debts and legacies in that State, to transmit the residue to the executor or administrator at the last domicile of the testator, to be there distributed according to law, or in pursuance to the terms of the will, and that such duty can be enforced by a suit brought by the executor of the domicile against the other. No such enforceable duty is imposed, and if it is usual for the Probate Courts of a State to order such transmission of the residue, it is only a matter of comity and is simply to be directed by the Court in its discretion where the circumstances render it equitable, and this is not a case in which such discretion ought to be exercised.

ARGUMENT.

I.

The Hayes Mechanics' Home, in whose favor the decree was made, had no legal or equitable claim upon the defend-

ant in this suit. The defendant has assumed no trust relation with that corporation. In fact that corporation has no legal or equitable claim whatever upon the estate of George Hayes. Over twenty years ago it was the mere recipient of a part of the estate, through the pleasure or discretion of the Pennsylvania executor, Wells. It does not appear anywhere in the case that Wells, the executor, had any purpose to interfere with the estate in New Jersey, or to get it any way into his hands. Nor does it appear that if he had, it was his intention to give it to Hayes Mechanics' Home. It may be inferred from the proofs that he did conclude to give residue of the personal property in his hands to that corporation, but there is no order of Court proved in this case directing him to do so, nor is there any evidence of any written declaration of his design to do so, nor is there any proof of the manner in which that purpose, if it was conceived by him, was manifested or made in any way effective. The only proof we have is the order of the Court directing that certain real estate in Pennsylvania and Michigan be conveyed to that corporation. So far as the proofs go there there is no evidence that either of the executors formed or expressed the intention to apply the New Jersey property of George Hayes to that particular charitable purpose. The executor Wells finished his duty and discharged all his functions in 1864, when the real estate was conveyed, and no rights in the estate of George Hayes have since accrued to the Hayes Mechanics' Home.

It does not even appear by the bill or the proofs that if the administrator in New Jersey had turned over the funds in his hands to this new executor in Pennsylvania, to the end that they together might apply it to the purposes of the will, they or either of them would have applied it to the support of the Hayes Mechanics' Home. It may well be supposed that if such action had been taken and the fund formally transmitted to the Pennsylvania execu-

tor, it would have been on the condition and agreement that inasmuch as it was the proceeds of New Jersey real estate belonging to George Hayes, it should be used under the provisions of the will to unite in the support of St. Barnabas Hospital in New Jersey, an institution then founded, purpose of which was to furnish a retreat for disabled, aged, infirm and deserving American mechanics.

Therefore the Hayes Mechanics' Home had no standing in New Jersey to demand by suit anything from the defendant, as administrator of the estate of George Hayes in New Jersey, and the decree enforcing such demand directly in its favor should be reversed.

II.

Dundas T. Pratt, in his capacity of succeeding executor in Pennsylvania had no right to make any such claim.

The granting of letters testamentary to him twenty years after the estate had been settled and all the functions of the executor ended in Pennsylvania, was a work of supererogation. There was nothing in Pennsylvania for him to administer and could not be, for by the records of the Orphan's Court it appears that the whole of the Pennsylvania property was administered and applied according to the will of the Pennsylvania executor in the discharge of his trust. In like manner all the New Jersey property had before his appointment been applied by the New Jersey executor in discharge of the same trust, so far as it was imposed upon him.

The Pennsylvania executor took no title to the New Jersey real estate and acquired no right as to the disposition of it.

The whole of his estate, real and personal, after payment of the debts and legacies, was left by George Hayes to his executors in trust, to be applied by them to the purposes named. He knew that part of his estate was in Penn-

sylvania and part in New Jersey, and he therefore named one executor in Pennnsylvania and one in New Jersey, and while naming two alternates, he provided that one should be in Pennsylvania and the other in New Jersey. Undoubtedly both the executors could have acted in both places, and the entire estate could have been turned into money so that the residue of the whole could be jointly used by both in their joint discretion for the purposes named in the will, but they themselves determined otherwise. The Pennsylvania executor determined to deal only with the property in Pennsyvania and Michigan and the New Jersey executor determined to deal only with the New Jersey property. This was a matter wholly within their discretion, and it was done wisely. Neither acquired any right in or power over the property in the jurisdiction of the other. And neither undertook to interfere with the others possession. Mr. Wells, the Pennsylvania executor, took all the personal property and took control of the real estate in Pennsylvania and Michigan, and the New Jersey executor took control of the New Jersey real estate, and received its rents and profits.

By the will those executors were enjoined to dispose of both principal and income of the residue of the estate either in founding a charitable institution of the kind mentioned, or uniting in the support of one already founded.

The Pennsylvania executor, exercising his discretion, did attempt to found one, and applied all his money and land for that purpose, with the result that none was founded. No step was taken the direction contemplated by the executor for nearly thirty years after his death, and not until this suit was begun.

With regard to the New Jersey property, it was held and the income accumulated by the New Jersey executor, his intention being to unite in the support of St. Barnabas Hospital, announced many years ago, and not carried out then

only because of the impossibility of selling the property. As soon as it could be sold, the residue was ascertained and applied by the administrator to the purposes long before selected by the executor charged with that trust. It had been actually applied and was in the hands of the beneficiary not only at the time of commencing this suit, but before the issuing of letters testamentary to Mr. Pratt under the title of "succeeding executor."

Thus, the trusts of the will have been fulfilled.

This succeeding executor has no more right to complain of the manner in which the New Jersey portion of the trust was fulfilled than the New Jersey administrator has to complain of the manner in which the Pennsylvania portion of the trust was fulfilled.

III.

But even if the Pennsylvania executor was authorized to obtain the New Jersey fund by transmission from this jurisdistion, or to dispose of it at his own discretion, he had no power to bring suit in the New Jersey jurisdiction against the representatives of the estate there, but his only remedy was to apply to the Orphans' Court in New Jersey for such direction as to such transmission as that court at its discretion under the circumstances of the case might see fit to make.

> Stacy v. Thrasher, 49 U. S.; 6 Howard, 44–58.
> Noonan v. Bradley, 76 U. S.; 9 Wallace, 394.
> Johnson v. Powers, 139 U. S., 156.

In the latter case this Court says: "The plaintiff certainly cannot maintain this bill as administrator of Stewart even if the bill can be construed as framed in that aspect, because he admits that he has never taken out letters of ad-

ministration in New York; and letters of administration granted to him in Michigan confer no power beyond the limits of that State and cannot authorize him to maintain any suit in the Courts, either State or national, held in any other State."

The plaintiff, the Pennsylvania executor endeavored to escape this disability by filing before bringing suit, in the office of the clerk of the Court of Chancery an exemplified copy of the record of his appointment, under the provisions of the act of the Legislature of New Jersey, February, 19, 1879, (P. L. 28), which provides "that any executor or administrator by virtue of letters obtained in another State may prosecute any action in any Court of this State without first taking out letters in this State; provided that such executor or administrator shall upon commencing suit file in the office of the clerk of the Court in which such suit shall be brought an exemplified copy of the record of his or their appointment."

This act does not remove such disability. It does not authorize an executor appointed in any State of the Union to bring a suit in any Court of another State against an executor appointed in that State with power to administer an estate to recover from him any part of the estate, or to litigate with him any controversy concerning the disposition of the funds of the estate under the control of its proper Probate Courts and their duly appointed officers. This act was really intended to authorize the executor of one State to bring suit in another upon contracts made with the testator or himself, as executor, or to litigate other similar causes of action. But even this cannot be done under the act so long as there is a duly appointed executor or administrator in the State in which the suit is brought clothed with ample powers to pursue such remedy. It was never intended to enable a foreign executor to call executors or administrators acting under the direct authority of the

Courts in this State to account to such foreign executor for their action in the administration of the estate. In Mahnken's case, 9th Stewart, 36 New Jersey, Equity 518, an action was brought by a foreign guardian against executors in this State to compel them to pay over moneys belonging to the estate to the foreign guardian. The application was refused. The Chancellor said: "No one claiming to be the representative, whether *ab testato* or *ab intestato*, can meddle with any portion of the succession before proving the will or receiving a grant of administration or some other formal induction into the property in the forum where such portion is found." This decision was made in 1882, three years after the act of 1879 was passed. Certainly that act was not intended to authorize executors and administrators in this jurisdiction or "meddle with the succession" here, and manifestly it does not give any power to a foreign administrator by a suit against a home administrator, whose duties have been fully performed and discharged to bring a suit against him to recover moneys claimed to be due upon the allegation that such duties were improperly discharged. In Beall v. New Mexico, 16th Wallace, 535, it was held that an administrator, *de bonis non*, could not sue a former administrator or his representatives for a devastavit or a delinquency even in the same State. Mr. Justice Bradley said: "For the delinquency of a former administrator he is responsible to the creditors, legatees and distributees directly, and not to the administrator *de bonis non*."

If, therefore, Mr. Hayes, the administrator *cum testamenta annexo*, would not be responsible to any administrator *de bonis non* subsequently appointed in this State, much less can it be held that he is responsible to a foreign executor or administrator in a foreign jurisdiction, solely for the purpose of making an attack upon the administrator here for an alleged fuilure in the fulfillment of the trust reposed in him.

The order appointing Mr. Hayes administrator is not printed in the original transcript, but will be found in the appendix of the exhibits. For convenience it will be given here.

ESSEX COUNTY SURROGATE'S OFFICE.

To all to whom these presents shall come, Greeting:

Whereas, George Hayes, late of the city of Philadelphia, in the State of Pennsylvania, departed this life having made and executed a last will and testament, an exemplified copy of which has been duly proved, according to law, before the surrogate of the county of Essex; and whereas, Jabez W. Hayes, after having taken upon himself the execution of said will in this State, has departed this life, that due notice has been given of this application to Dundas Pratt, the only other surviving executor named in said will, and to all other parties in interest: Therefore, I, C. Meyer Zulick, surrogate of the county of Essex, do hereby appoint Henry Hayes administrator of all and singular the goods, chattels and credits of the said George Hayes deceased, in the State of New Jersey, left unadministered by Jabez W. Hayes, deceased, who is duly authorized to administer the same agreeably to said will.

In witness whereof I have hereunto set my hand and seal of office this twelfth day of December, A. D. eighteen hundred and eighty-two.

[SEAL] C. MEYER ZULICK,
Surrogate.

If the Pennsylvania executor had intended to assert a claim that the residue of the New Jersey property being the residue in the hands of the ancillary administrator, must be sent to the jurisdiction of the principal administration, in order that it might be there applied by both administra-

tors to the trusts named in the will, he should have applied to the Orphans' Court of the county of Essex, by which letters testamentary were issued to Henry Hayes, and in which court his account was settled, for an order requiring him to transmit the fund to the principal forum of the administration.

Although formerly the Orphans' Court had no power to decree distribution or direct the executor as to the disposition of the residue in his hands, it has had such power since 1872. By the act of 1872 (Pam. L. 47) in Revision 785 Sec. 151, it was provided that when the accounts of any executor or administrator *cum testamento annexo* have been allowed, the Orphans' Court should have full power to direct the disposition of the residue according to the directions of the will, and to enforce its decrees in the same manner as the Court of Chancery, with an appeal to the Prerogative Court.

No such application was made. No action whatever was sought by the alternate executors or taken by the Orphans' Court of the County of Essex as to the disposition of the residue found on the settlement of the account of Mr. Hayes in that court. It was undoubtedly assumed that that residue when ascertained would be applied by Mr. Hayes faithfully to the purposes of the will, and it has been so applied. Any complaint against such application should now be made to the Court in which he was appointed by such persons interested in the estate of George Hayes as are entitled to complain of any improper execution of the trusts of his will. This foreign executor has no right to demand as a right by a suit in the Court of Chancery that the New Jersey executor shall account to him for the proceeds of the property in New Jersey devised to him by the will, or the manner in which he has in his discretion disposed of that property.

IV.

But even if the Pennsylvania executor had a right to sue the New Jersey administrator, or if he had applied to the Probate Court of New Jersey for an order directing its administrator to transmit the residue in his hands to Pennsylvania for administration there, he could not have recovered in a suit, nor would the Orphans' Court have been bound to make any order for such transmission.

There is no obligation to make such transmission. It is only a matter of comity, and depends wholly upon the circumstances of the case, and in this case there are no circumstances which call for the exercise of such comity.

There is nothing left for the new executor, appointed in Pennsylvania, to do with respect to the subject matter of George Hayes' estate. The executor appointed in Pennsylvania is *functus officio*, and all his duties were closed twenty years ago. No considerations of comity and no principles of equity require that the acts done in New Jersey by the executor appointed here that the exercise of his discretion should be undone at the instance of a new executor in Pennsylvania, in order that he may have the privilege of exercising the discretion over again and applying the fund to a different purpose.

These views are borne out by the authorities.

The principles upon which this matter depends are very clearly stated in Dent's Appeal, 10 Harris, 514; Penna., 1854.

The syllabus of that case is:

"Although the personal property of the decedent is distributable according to the law of *the domicile*, yet comity does not require that the distribution be made in the country of the domicile; but, on the contrary, the distribution of the fund may be made by the tribunals of the country

under whose authority it was collected, and such distribution need not be confined to creditors, but, in the absence of creditors, may embrace legatees, or next of kin, entitled to portions of the fund and presenting their claims.

"The Orphans' Court of the county in this Commonwealth, wherein letters of administration on the estate of one whose domicile at death was in the District of Columbia, was not bound to order the assets collected in this State to be transmitted to the administrator of the domicile by whom the fund in dispute was claimed, but had the power to direct distribution not only amongst *creditors* of the decedent, but, in their absence, to *legatees or next of kin* entitled to distribution and submitting their claims."

Lewis, *J.*, delivering the opinion of the court said:

"The domicile of the decedent was in the District of Columbia, and Mr. Dent may, therefore, be designated as the *home* administrator. As the assets arrise from real estate in this Commonwealth, and were collected by Mr. Morris under letters granted according to our own laws, the latter may be called the foreign administrator. They are occasionally described by different terms—the administrator of the *domicile* is sometimes called the *principal*, and sometimes the *primary* administrator, and the administrator of the *situs* is frequently called the *auxiliary*, and often the ancillary administrator. But it does not matter what terms are used to designate the distinction in *fact*, as to the objects of the different administrations, so that we guard ourselves against the conclusion that there is a distinction in *law* as to the rights of the parties entitled as distributees. It was truly said by the judge who delivered the opinion of the court in Harvey *vs.* Richards, 1 Mason R., 331, that 'there is no logic in words, and that each of these administrations may properly be considered as a *principal* one, with reference to the limits of its exclusive authority, and each

might, under circumstances, justly be deemed an auxiliary administration,' although the right of succession to personal estate of an intestate is to be regulated by the laws of the country in which he was domiciled at the time of his death, it is fully settled that the administration of the estate must be in the country in which possession of it is taken and held under lawful authority. 1 Williams' Ex., 356; 8 C. 1 & Fin., 1; 1 Dowl. & Ryl., 35; 1 Vern., 397; Story's Confl. of Laws, Ch. 13, § 518. The administrator, under a *foreign* grant, has a right to hold the assets received under it against the *home* administrator, even after they have been remitted to this country. 1 Williams' Ex., 357; 2 Ib. 1415." * * *

In this case the assets, which were the subject of dispute, were the proceeds of real estate in Pennsylvania, and it was sought to have them transmitted to the District of Columbia, which was claimed to be the domicile of the testator.

In Mothland *vs.* Wireman, 3d Penna. Rep., 188, Justice Gibson said:

"An administrator here, although admitted to be but auxiliary to the administrator at the place where the decedent was domiciled, is bound to remit the assets to be administered there, only in case there are no domestic claimants, in the character of creditors' legatees or next of kin; but that where these appear the assets are to be retained for administration, according to our own laws."

"The question has been considered in a number of cases, there being, generally, two sets of administrators, one of them being called the *administrator domicilii*, the principal and the primary administrator; and the other being variously styled the administrator of the *situs*, the ancillary and the auxiliary administrator. But as Lewis, *J.*, aptly said, in his learned opinion (*Dent's Appeal, 10 Harris, 519*):

'It does not matter what terms are used to designate the distinction in *fact*, as to the objects of the different administrations, so that we guard ourselves against the conclusion that there is a distinction in *law* as to the rights of the parties entitled as distributees.'"

This decision has been cited with approval in many subsequent cases.

It was followed by the New York Court of Appeals *in the matter, the accounting of Hughes*, 95 N. Y., 55, and the Court held that where there are two administrations, one in the place of domicil and one ancillary, whether the courts of the latter will distribute the assets collected in their jurisdiction or recount them to the domicil, is a question not of jurisdiction, but of judicial discretion; and the Court held it error for the Surrogate of New York to refuse to order the ancillary administrator to distribute the estate in New York when the next of kin were in New York, and only effect of sending it to the domicil would be increase the expenses.

In *Hunter* v. *Bryson*, 5 Gill. & Johns., 487, the Court said a testator may appoint different executors in different countries in which his effects may be, or different executors as to different parts of his estate in the same country; and where a testator in Ireland had appointed executors there and declared that certain persons in Baltimore should be trustees of his property in America, with power and direction to collect and remit the same to his executors in Ireland, such persons are to be considered not as trustees, but as limited executors, and bound to execute the trust in the mode prescribed by the will, which, in their case, was by sending it to the executors in Ireland.

In *Carmichael* v. *Ray*, 5 Ired., 365, an administrator in

South Carolina, the place of the domicil of the intestate, filed a bill against the administrator in North Carolina, asking for an account of assets and for distribution.

The Court: The counsel for the plaintiff endeavored to maintain his bill upon his right as administrator in the State of the intestate's domicil to receive the estate money in the hands of the administrator here after the payment of debts, for the purpose of making distribution of the whole estate among those entitled by the law of South Carolina; but he has no such right as that supposed. It is true that an intestate's estate, wherever found, is to be distributed according to the law of the country of his domicil—that is, among the persons and in the proportions prescribed by that law; but each country claims the power of administering those parts of the effects that are within it for the security of domestic creditors, and of course by the distribution of the surplus. There is no obligation on the administrator here to pay the surplus to any administrator abroad, though he be appointed in the country of the testator's domicil. There are two clear reasons why there cannot be any such obligation. One is that an administrator has no extra-territorial operation so as to enable the administrator abroad to demand the surplus from the administrator here more than it would enable him to sue an ordinary debtor of the intestate. (The Governor v. Williams, 3 Ired., 154.) The other is, that it would be a vain and useless thing for the one administrator to pay over the effects to the other, for by whosesoever hands they are distributed they go to the same persons, and it is therefore immaterial whose hand distributes; and the law will not take the fund from the one for the mere purpose of making it pass through the other.

In Woerner on American Law of Administration, § 167, it is said: It is not obligatory upon the courts to transfer the assets to the domicil for distribution. In their judicial dis-

cretion, to be guided by the circumstances of each particular case, they may be thus remitted (citing Gravillon v. Richards, 13 La., 293), or ordered to be distributed by the ancillary administrator to the parties in interest seeking their remedy there.

In *3rd. Williams on Executors*, in the note on the subject of ancillary administrations, the subject is fully discussed and the cases cited. The annotator says, "The tribunal in which in the ancillary administration is pending is not however, bound in all cases to order the residuum of the estate to be transmitted to the country of the original administrator.

"There may be cases in which that tribunal, acting on the circumstances, may deem it proper in the exercise of a sound judicial discretion to ascertain the law of the domicile of the deceased for itself and to apply it in the distribution of the estate of the deceased under its own order and direction."

In *Cary's Probate Law and Practice*, sections 293–4, he says:

"Administration of the effects of a deceased non-resident of the state is usually considered merely ancillary to the principal administration at the place of domicile. But it is not necessary that administration should first be taken in the place of domicile. It seems that it is not necessary that the will of a non-resident testator should be proved at the place of domicile before a grant of administration upon estate left by him in another state.

"There is no privity between the general administrator at the place of domicile and the ancillary administrator. They are entirely independent of each other.

"The place for final settlement is at the place of domicile. The principal business of ancillary administration is to collect the assets and pay the debts within that jurisdiction, settle the accounts, and remit the residue to the place of principal administration, where the final settlement and dis-

tribution is to be had, *or otherwise, as the court may order, according to the circumstances of the case.*"

In the case of *Harvey* vs. *Richards*, 1st Mason, the subject is very fully discussed by counsel and by Judge Story, who decided the case. It was a bill in equity to compel the defendant who was an administrator with the will annexed of a person who died in Calcutta, to distribute the undevised estate of the testator in this country among the next of kin residing here. The executors appointed by the will of the testator resided in Calcutta. The question was, whether the defendant, the administrator with the will annexed, should be ordered to distribute the effects among the next of kin in this country, or should send it to Calcutta to be distributed by the executors there.

Mr. Webster insisted that the distribution ought to be made in this country, and in speaking of the rule that effects collected in a foreign country ought to be remitted to the hands of the administrator or executor for administration in *loco domicilii* after paying creditors, said: "Is there any such universal and inflexible rule? The plaintiff contends there is not. The law on this subject may be considered as of modern origin. It arises from comity, and from the regard which the courts of one country pay to the private rights of the citizens or subjects of another country. But the rule in the extent contended for, is not required by any of the reasons on which the general doctrine or general practice is founded. *The property is to be remitted when any purpose of substantial justice requires it. But if the rightful owner be here, why should it be sent abroad for no reason but to send him after it?*"

And Judge Story, in this case *held:* that it was not necessary to send the money to the foreign executor.

He says, page 409, "The property is here. The parties

are here, and the rule of distribution is fixed. What reason then exists why the court should not proceed to decree according to the rights of the parties? Why should it send our own citizens to a foreign tribunal to seek that justice which it has in its own power to administer without any injustice to the other person?"

Judge Story asks in this case (p. 410):

"Suppose two executors are appointed by the testator, one abroad and one here, and the bulk of the property is collected here, shall the court direct the domestic executors to transmit the whole property to the foreign executors because it is to be distributed according the law of the foreign domicile?

"Suppose a legacy to charitable uses in this country, good by our law, but which, from motives of public policy, the courts of the foreign country decline to enforce, shall it be said that our courts are bound to enforce by remitting the property there, a policy by which they are injured?

"Whether the court here ought to decree distribution or remit the property abroad is a matter not of jurisdiction but of judicial discretion, depending on the particular circumstances of each case. *There ought to be no universal rule on the subject but that every nation is bound to lend the aid of its tribunal to enforce the right of all persons having rights to the fund, when it will not produce inconvenience, or conflicting equities.*

"If it be said that it belongs to the public policy of a country to sustain claims for debts due to its citizens, *it seems to us no less to belong to that policy to sustain any other claims of its citizens which are founded in justice and law.*" P. 421, 1 Mason).

Mackey vs. *Coxe*, 18 H. 100.

J. J. Nelson and Curtis said:

"This being an ancillary administration it depended on

the discretion of the Orphans' Court which granted it, whether the money remaining in the hands of the ancillary administration after the satisfaction of all claims in his jurisdiction should be distributed here by the ancillary administration, or remitted to the principal administration for distribution, *and until that discretion shall be exercised ancillary administration directed which of those courses to pursue he is in no default.*"

(For full discussion of cases see *Careton* vs. *Mills*, 13 S., C. 409; 36 Am Rep. 700).

In *McLean* vs. *Meek*, 18 H. 16.

The intestate died in Tennessee, having also property in Mississippi; administration was taken out in both states. The estate was declared insolvent in Tennessee. A firm had a large claim allowed there which was only part paid out of the estate there.

The survivors of the firm filed a bill twelve years after in the Circuit Court of Mississippi against the administration *de bonis non*, and one of the heirs to recover the balance out of the estate there.

Bill dismissed.

Affirmed in Supreme Court. They said:

"These administrators were independent of each other. The respective administrators represented Jos. Meek by an authority coextensive only with the state where the letters of administration were granted, and had jurisdiction of the assets there, and were accountable to creditors and distributees, according to the laws of the state granting the authority. No connection existed or could exist between them, and therefore a recovery against the one in Tennessee was no evidence against the other in Mississippi."

In *Stacy* vs. *Thasher*, 6 H. 44, a judgment was obtained in Mississippi against the administration of Lee.

The assignee of the judgment sued the administrator in Louisiana, where Lee died.

Demurrer.—The question being whether an action of debt will lie against an administrator in one state on a judgment against a different administrator in another.

Held that it would not.

Grier J. said, "His representation of an intestate is a qualified one, and extends not beyond the assets of which the ordinary had jurisdiction. He cannot therefore do any act to affect the assets in another jurisdiction, as his authority cannot be more extensive than that of the government from whom he received it. The courts of another state will not acknowledge him as a representative of the deceased or notice his letters of administration."

See *Tourton* vs. *Flower*, 3 P., Wms. 369.
Borden vs. *Borden*, 5 Mass, 67.
Pond vs. *Makepeace*, 2 Met. 114.
Chapman vs. *Fish*, 6 Hill 554.

* * * * * * * * *

"Administrators in different states have no privity with each other in law or in estate. They receive their authority from different sovereignties and own different property.

"The authority of each is paramount to the other. Each is acountable to the ordinary from whom he receives his authority. * * * Consequently a judgment in another state is both as to the administrator and the property confided to him, *res inter alios acta*."

In *Apsden* vs. *Nixon*, 4 H. 467.

A man died in England leaving property there and in Pennsylvania. His executor, Nixon, proved the will in both places. The residue was left to testator's heir at law. A dispute arose as to who was heir. A suit has been brought in England by alleged heirs, which was dismissed.

They brought suit in Pennsylvania against the executor.

He set up the decree in England. The question was, whether it barred the heirs in Pennsylvania. Held that it did *not*. Catron, *J.*, said, "Under his English letters Nixon could do no act as executor beyond England, so neither could he voluntarily transfer the Pennsylvania assets to the foreign jurisdiction as this would have been in violation of his letters in this country. By these he held the assets here as trustee and in subordination to the laws of Pennsylvania, and the orders of the Orphans' Court executing those laws.

"It is insisted by those setting up the bar, that the administration of the domicile is the principal administration, and this being in England, and the assumed devisee's residence there also, the Pennsylvania administrator was auxiliary to the foreign one; that in the British suit the American assets might have been recovered from the executor, the bill having gone for the Pennsylvania assets as well as the English.

"However, it may be true in cases peculiarly circumstanced that one jurisdiction administering assets may, as a matter of comity, transmit them to a foreign jurisdiction there to be distributed, still the doctrine can have no application here, as no assets had been so transmitted.

"And a suit was pending, and in part decided in this country for the American assets before and at the time the decree in England was made; and therefore an assumption to distribute the assets in this country by the Court of Chancery in England *must necessarily have been treated by the Circuit Court as merely void for want of jurisdiction of the subject matter in the foreign court.* * * * and under the influence of the various laws prevailing in the different states, the courts of the states have been so much restrained as to render an exercise of comity among each other little more than a barren theory; nor could more be required in a case like the present where part of the assets

were administered abroad under independent letters granted there, and by a tribunal that was under no obligation to extend comity to the Probate Courts of this country, whatever might be done in the exercise of a sound discretion."

In *Vaughn* vs. *Northrup*, 15 Pet. 1.

Judge Story said: "An administrator appointed in another state cannot be sued in his official capacity in the District of Columbia for assets lawfully received by him as executor. Every grant of administration is strictly confined in its authority and operations to the limits of the territory of the government granting it, and does not *de jure* extend to other countries. It cannot confer as a matter of right any authority to collect assets of the deceased in any other state, *and whatever operation is allowed to it beyond the territory of the original grant is a mere matter of comity which every nation is at liberty to yield or to withhold, according to its own policy or pleasure with reference to its own institutions of the interest of its own citizens.*

"On the other hand the administrator is exclusively bound to account for all the assets which he receives under and in virtue of his administration to the proper tribunal of the government from which he derives his authority, *and the tribunals of other states have no right to interfere with or to control the application of those assets according to the lex loci.*" "Hence it has become an established doctrine that an administrator appointed in one state cannot, in his official capacity, sue for any debts due to his intestate in the courts of another state; and that he is not liable to be sued in that capacity in the courts of the latter by any creditor for debts due there by his intestate."

In *Conover* vs. *Chapman*, 2 Bailey, 436, Judge Butler held that the ancillary administrator in Maryland was not charged with the Maryland assets so as to render him

amenable for them in South Carolina, the domicile. That the South Carolina and Maryland administrator, though the same person, were legally distinct. *That as regards foreign assets he may account for them by showing that they are in another jurisdiction to which as a general rule he is accountable alone for their disposition.*

In *Carmichael* vs. *Ray*, 1 Rich. 116 (So. Car.), the administrator of a person domiciled in South Carolina sought to recover personal property of the intestate in North Carolina. Held that he acquired no title. Judge Butler says if a foreign administrator has, in virtue of his administration, reduced the property of the intestate to possession there and that property should afterwards be taken to another country against his will, he can sue for it there in his own name, for he is to all intents and purposes the owner thereof.

In *Hill* vs. *Tucker*, 13 H. 462-468, the cases of *Aspden* vs. *Nixon*, and *Stacey* vs. *Thrasher*, are referred to. In that case a man died in Virginia leaving property in Virginia and Louisiana and appointing two executors in each state; claims were put in judgment against the executors in Virginia, and executions returned *nulla bona*. The executors sought to recover the judgments against the creditors in Louisiana who had ample assets.

The court points out the difference between executors and administrators and says that a judgment against the executors in Virginia was not conclusive against those in Louisiana notwithstanding the privity that exists between executors.

Price vs. *Mace*, Admr., etc., 47 Wise, 23.

"Where there are several administrations of an intestate estate in different jurisdictions, a judgment against one administration does not bind another.

"Whether, and how far judgments against the principal administrator accompanied by proof that there are no assets in his hands to satisfy them, would be evidence in a court which had granted ancillary letters, *quere.*

"It is the place of the intestate's domicile at the time of his death which determines the principal administration.

"Where letters of administration on the same estate were granted in this and another state, and both describe the intestate as of that state, a judgment against the foreign administrator is not even prima facie evidence, in an action against the Wisconsin administrator."

Ryan, *C. J.*, says: "*It is discretionary with the court of the ancillary administration whether to make distribution or to order the assets to be sent to the principal administration for distribution,*" and he cites, Story Conflict L., Sec. 522 and Sec. 529, and *Mackay* vs. *Coxe*, 18 How. 100, above cited.

In the case of *Banta* vs. *Moore*, 15 N. J. Eq., Jane Moore, domiciled in New Jersey, died intestate, and letters were granted here to the complainant. Her brother obtained some of her property in New York aud procured letters there. The New Jersey administrator filed a bill in the Court of Chancery to recover these moneys from the administrator in New York, alleging that there were no debts. The bill was demurred to, and it was held that since the intestate left assets both in New York and New Jersey, administration was rightly granted in both States. That administration must be in the jurisdiction in which possession of it was taken and held under lawful authority, and where there are two administrators in different countries, each portion of it must be administered in the

country where possession of it was so taken; that the right of administration was irrespective of the domicile of the intestate; that the claim that the New York administrator having collected funds there, was bound to account for them to the administrator here is without foundation in principle.

The Court refers to the cases of *Harvey and Richards* and *Vaughan* vs. *Northrup*, above cited, and also the case of *Preston* vs. *Lord Mellville*, 8th Clark and Finnelly, page 1, in which latter case the testator was domiciled in Scotland and administration granted upon the personal estate in England, and it was held that the trustee under the will in Scotland could not call the personal estate out of the hands of the administrator in England, but that it must be administered in England by virtue of the letters of administration.

Chancellor Green, in this case of *Banta* vs. *Moore*, says: "Neither administrator has a claim against the funds in the hands of the other. Each administrator is to be called to account for the funds in his hands in the jurisdiction where he was appointed."

In *Normand's Administrator* vs. *Grognard*, 17 N. J. Eq., 425, Chancellor Green in the Prerogative Court sustained the same doctrines.

There the intestate died in Jersey City, the bulk of his property being in Pennsylvania. Administration was granted to the same party both in this State and Pennsylvania. The Orphans' Court of Hudson county required the administrator to file an inventory of the whole estate and give security for the whole property. This order was appealed from, and the ordinary said: "In strictness, the grant of administration operates only within the jurisdiction where it is granted. It gives no legal right to collect debts or recover possession of property elsewhere. Hence,

it frequently becomes necessary to sue out letters of administration in other States where the property may be situated or debts may be owing. In such case the inventory of each administrator regularly includes only the property within the jurisdiction where his letters are granted. For this property only he is accountable. Each administrator accounts for the property in his hands, before the tribunals of the State or sovereignty from which his authority emanates. * * * Whether distribution shall be made by the tribunals of the several States by which letters are granted, or whether the balance for distribution shall be transmitted by the foreign administrator to the place of the domicile, to be there distributed, depends upon circumstances and rests in the sound discretion of the tribunal before which the account of the foreign administrator is brought for settlement. *Where the parties interested in the distribution reside in the State where foreign administration is granted, the fund will be retained and distributed there.*"

The Chancellor refers to the case of *Parsons* vs. *Lyman*, 4th Bradford's Rep., 268, and *Isham* vs. *Gibbons*, 1st Bradford, 70.

In the former case the testator was domiciled in Connecticut. The will was proved and letters testamentary were issued there and also in New York. Upon statement of his account by the executor in the State of New York the court there settled the construction of the will, and directed distribution of the funds, although a suit for that purpose was pending in the State of Connecticut.

In *Mahuken's case*, 36 N. J. Eq., 518, an action was brought by a foreign guardian against executors in this State to compel them to pay over moneys belonging to the estate to the foreign guardian. The application was refused. The Chancellor said: "No one claiming to be the representative, whether *ab testato* or *ab intestato*, can meddle with any

portion of the succession before proving the will or receiving a grant of administration, or some other formal induction into the property in the forum where such portion is found."

In a recent case in Pennsylvania this subject is discussed, and the cases referred to, viz.: Appeal of Modesto del Valle, April 19, 1886, 7th Eastern Reporter, 708.

This was an appeal to the Supreme Court of Pennsylvania, from a decree of the Orphans' Court of Philadelphia county.

A woman resided in Cuba; died, leaving a large personal estate in Philadelphia. She left five children. Four of the children came to the Orphans' Court in Philadelphia and asked to have their shares distributed there, and not sent to the domicile. This was done, but the four children and other creditors and claimants in Cuba of the fifth child endeavored to have this share transmitted to the executor of the domicile, so that it might be subjected to the claims which had arisen against it in Cuba.

The Orphans' Court said: "It is well settled that the assets will not be remitted to the administrators or executor of the domicile, when there are claimants within the jurisdiction of the ancillary administration, and it is affirmatively shown or admitted that there are no debts to be paid and no open accounts, as between the decedents and a distributee, making such remission necessary or proper. *Dent's Appeal*, 10 Harr., 514; *Parker's Appeal*, 11 Sm., 478. It is equally well settled that one having no direct interest in the estate itself—as a creditor or legatee, or distributee, not claiming under an attachment—cannot demand an account; and as a necessary consequence cannot, when an account is filed, interfere in its settlement or in any proceeding based upon it. *Keene's Appeal*, 10 Sm., 504; *Greiner's Estate*, 2 W. N. C., 292. Unless, therefore, we are prepared to de-

cide that greater rights are to be accorded to the foreign creditors of a distributee than are possessed by those residing within our jurisdiction, we cannot recognize the exceptants in the present case as having a status before us.

"It is conceded that the distribution has been properly awarded as to four-fifths of the estate, all but the share of one legatee. Upon what principle or by what authority shall it be withheld from the latter, or from those claiming under her by assignment? It is true, for certain purposes, that personal property is said to have no *situs*, and at the death of the owner questions as to the execution and validity of his will, or as to distribution in case of intestacy, are to be determined by the law of the domicile; the authorities referred to by the counsel for the exceptants are illustrations of this doctrine. But when the distributee has been thus ascertained, the operation of the law of the domicile, so far as the ancillary administration is concerned, is at end; the *situs* of the property is such as the new owner may think proper to give it; and his creditors have only such right to interfere with his power of disposal as they may acquire under the laws of the place where the property actually is. Liens obtained at the domicile have no extra territorial force; even as between the various States of the United States, a judgment or decree obtained in one is only available as a basis of suit in another; and as between foreign States the case is atill stronger."

The Supreme Court affirmed this judgment for the reasons given by the Orphans' Court.

It will be observed that in this case the Court held it to be well settled that in order to demand an account from the ancillary administrator, even in the court which appointed him, the claimant must have a direct interest in the estate itself.

It follows, therefore, that the Hayes Mechanics' Home,

which has no interest in the estate itself, except that part of it which the Philadelphia executor has already chosen to give it, has no standing whatever in the Court of Chancery of New Jersey to recover another part of the estate which has already been bestowed upon another, nor has the Pennsylvania executor such an interest in the property in this State as to enable him to maintain such an action.

V.

The property in dispute in this case is the proceeds of the sale of real estate.

The dispostiòn of real estate is governed by the law of the place where it is situated. This law would govern the descent of land undisposed of by will and by this law the question of the due execution of a will would be decided.

It is the general rule that the disposition of real estate is governed by the law of the place where it is and when a testator appoints an executor in that place, and gives him power to sell real estate, the presumption is that he intends him to have power over his real estate there, and that he may sell it according to the laws of the place where it is, and may also dispose of the proceeds as well as of the land itself, under the directions of the will.

It was held in "Irey's Estate," Pennsylvania, that proceeds of real estate will not be remitted to foreign executors.

11 Weekly Notes of Cases, 207.
3 Brightley's Dig., Pa., 3829.

In this case the testator died in California in 1864, leaving a will bequeathing his estate to persons in that State. He owned real estate in Philadelphia, subject to a life interest, which expirêd in 1878.

Afterwards, upon petition of a legatee, letters of admin-

istration with the will annexed were granted in Pennsylvania, and the land sold to pay legacies which were a charge on the land.

The California executor and residuary legatee claimed that the fund should be transmitted to him for distribution.

The Auditing Judge (Penrose) refused this claim after stating the ordinary rule to transmit the balance of personal estate, and saying that it would not be observed when the parties in interest appear and the only effect would be to increase expenses, he said: "But the rule itself has no application when the fund arises from the sale of real estate. The testator having died in 1864, the lien of his debts having long since expired, it is not easy to see upon what principle the expenses of administration ever were or could be a lien upon lands lying in Pennsylvania, such lands not having been devised to the executor. The claim for remission is therefore refused, as is also the claim for payment of the amount alleged to be due to the California executor for expenses of administration in this State."

The court affirmed the adjudication.

There is no need to cite authorities upon the proposition that the real estate is governed by the law of the situs. The rule is well settled and it is sufficient to refer to the text books.

Even with respect to personal property there is a tendency to limit the rule that it is governed by the law of the domicil. The distribution of personal property in cases of intestacy is according to the law of the domicil, but yet so far as it concerns creditors it depends on the law of the country where it is situated. Tilghman, *J.*, in *Milne* vs *Moreton*, 6 Binn., 353-361, and Mitchell, *J.*, in *Farmers & Mechanics' National Bank* vs. *Loftus*, 133 Penn., 97, says:

"Indeed it may be said that the tendency of modern au-

thorities, under the influence of European and Continental opinion, is toward the recognition of the law of situs to such an extent that what was an exception is tending to become a rule. See note to the latest edition of Story's Confl. L., § 383; Wharton Confl. L., §§ 346–353, and cases there cited; Westlake Int. L., § 141. Referring also to Dicey, Domicile Rule 57.

VI.

It is the general result of the cases that the disposition of the residue of an estate in the hands of an ancillary executor or administrator is wholly a matter of discretion, and that there is no rule or principle which requires that the funds which were in the hands of this administrator *cum test. annexo*, should have been sent into a foreign jurisdiction as against any proper claims here, whether of creditors, legatees named in the will, or objects of the testator's bounty and charity, selected by his executor here in pursuance of the power of the will, and all the cases show that the foreign executor or administrator has no right to meddle with the estate here or sue for it, unless such power is given, on proper application to the courts of this jurisdiction.

VII.

In this case such discretion ought not to be exercised in favor of sending the proceeds of real estate in New Jersey out of the State for the purpose of applying it to purposes not contemplated by the New Jersey executor who held the title to the property.

There were no circumstances that would have induced the exercise of such discretion, if the Orphans' Court had been applied to during the life of the New Jersey executor, or during the administration of the estate by the administrator with the will annexed.

Much less should a Court of Equity in a suit by one representative of the estate against another, make a decree to compel that result.

No opinion was filed by the Circuit Court—but simply a decree that the administrator with the will annexed shall pay this residue to the Hayes Mechanics' Home.

The fact that we have no information as to the grounds upon which the Court reached this conclusion, makes it impossible to confine the argument within narrow limits.

Lewis E. Wells, the Pennsylvania executor, closed his trust and settled his account in 1864. He had refused to take any part in the execution of the trust as to the New Jersey lands. He could not have been compelled to do so. Hill on Trustees, 214, 225.

In *Rinehart* vs. *Rinehart*, 2 McC., 44, the Chancellor said: "A party named as an executor cannot be compelled to accept the executorship or bear the burden of the trust except by his voluntary act. And there is no good reason why he should be made a party to a suit touching a trust which he has formally renounced, and to which he disclaims all right or title."

He died in 1876. From that time till May 10, 1884, there was no authorized representative of George Hayes' estate, but Jabez W. Hayes, his New Jersey executor, and Henry Hayes, the administrator, *cum testamento annexo*. Up to his death in 1882, J. W. Hayes, executor, represented the whole estate undisposed of. The latter, in pursuance of the executor's intention, realized the New Jersey surplus, and applied it to the purposes of the will in March, 1884. The property was devised to J. W. Hayes, as executor, and his lawful representative was the only person capable of executing the trust.

He did so, and the whole trust was then executed.

Dundas T. Pratt got himself appointed afterwards solely in in order to try to undo it.

He might as well seek to undo the disposition of the lands in Michigan made by his predecessor.

His suit is not against the Hospital of St. Barnabas, but against Henry Hayes, the individual. He seeks to make him pay the money over again, on the the theory that he wrongfully applied it to the purpose he chose. Suppose Henry Hayes had chosen to give it to another Mechanics' Home in Philadelphia; could the Hayes Mechanics' Home and this new executor, appointed after it had been so employed, have recovered it back from him?

There is no proof that Wells ever even thought of giving this land to that home. On the contrary it is proved that he refused to deal with it and left it to the discretion of J. W. Hayes. He could have proved the will and joined himself in the execution of the trust as to the New Jersey lands, but he declined to do so. He closed his trust without any action concerning it—and it rested in the hands of the New Jersey executor for twenty years.

And meanwhile the fund in Philadelphia was allowed to remain wholly idle. It seemed to require the example of the New Jersey executor to spur them to any action in Pennsylvania.

Between 1876 and 1882—six years—J. W. Hayes was the only acting executor of Geo. Hayes. Suppose *he* had then taken letters testementary in Pennsylvania as Pratt did in 1884 and had sold the New Jersey land and carried the proceeds to Philadelphia, could he not have disposed of these proceeds, being the residue in his hands, by uniting in the support of any such institution as provided for in the will, in Pennsylvania or elsewhere? Was he bound to give it to the Hayes Home which then had no existence except

on paper, merely because the former executor there had given it the funds in his hands?

Was there anything in the will confining the charity to Philadelphia, or to such a home as his Philadelphia executor might choose to organize? Had he not more ties to New Jersey, where his family had lived for generations and where he had passed four-fifths of his life?

If this is so, how can this new alternate executor now demand that *he* shall make the choice of the object to which the New Jersey fund shall be devoted, and overthrow the action of the representative of the original New Jersey executor?

Is it merely on the technical ground that the actual disposition of the fund must be in the place of the last domicile? But this has been shown to be a matter of mere comity and not of compulsion.

The other alternate executor, Horace H. Nichols, lives in Newark. Suppose he, in 1884, and before Pratt applied, had taken letters in Pennsylvania. Could he not have applied this fund at his discretion?

Both of the original executors were then dead. There were two alternates—one in Pennsylvania and one in New Jersey.

Suppose *both* had taken letters in Pennsylvania. The two would have been his executors lawfully appointed in the forum of his last domicile.

Would they have been bound to add this fund to the Hayes Mechanics' Home which had then been unused for 20 years? Could they not have applied it as they pleased so that they fairly fulfilled the trust? Could the Hayes Home have shown any legal right to it?

And if they had differed could Pratt have controlled? No court could have compelled them to agree, or to use the fund against their joint will.

Tempest vs. *Conroys*, 21 Ch. Div. 571.

In this case Sir George Jessel says: "It is settled law that when a testator has given a pure discretion to trustees as to the exercise of a power, the court does not enforce the exercise of the power against the wish of the trustees, but it does prevent them from exercising it improperly. And where a trust or duty is coupled with the power it will compel them to carry it out within a reasonable time."

And Colton, J., said: "The two trustees differ as to the purchase of an estate and one of them makes an application to get the consent of the court to its being done. * * No doubt it will prevent the trustees from exercising their discretion in any way which is wrong or unreasonable; but that is very different from putting a control on the discretion which the testator has left to them."

See also *Marquis Camden* vs. *Murray*, 16 Ch. Div. 161.

If therefore these two trustees, one in Pennsylvania and one in New Jersey, differ as to the disposition of the New Jersey fund specially in the charge of the latter, will a court in New Jersey compel them to apply it as the Pennsylvania trustee chooses? And this after it has actually been applied? Will it hold the New Jersey trustee liable to the other in damages because he *has* applied it in New Jersey?

And if the fund *had* been taken to Pennsylvania for application by the New Jersey administrator, and he or the alternate executor had applied to be associated *there*, with Mr. Pratt, can it be assumed that the court there would direct the disposition according to the wish of Pratt alone?

This residue was left to the *executors* named—two in number—one in Philadelphia and one in New Jersey, and on their death two more, one in Pennsylvania and one in New Jersey. First Pratt and then Nichols.

Wells died first, and Pratt had a right to letters in 1876. Then he and Hayes would have been executors, one in Pennsylvania and one in New Jersey, each with their own duties and their own property. In 1882 Hayes died, and Nichols might have taken letters in Pennsylvania or New Jersey. He and Pratt both supposed all occasion for it was gone, and neither took them.

The work in Pennsylvania was done, and that in New Jersey was properly left to Mr. Hayes' son and administrator.

Not till he had also finished his work did Pratt attempt to act. And now he seeks to undo it.

No court in New Jersey will help him, unless compelled by settled legal rules

There are no such rules. The trust has been fulfilled *here*, and New Jersey courts will not seek to take from a home charity to give to a foreign one. If it is a matter of comity it will not exercise it.

This is a sort of charity that begins and should end at home.

It will take care of home creditors; why not of home charities?

The creditors derive their character from the act of the testator in becoming their debtor.

This charity has its claim from the deliberate choice of the executor in whom the testator reposed the power of choice.

There is every reason why courts here should not thwart that choice—more reason than why creditors should be protected.

It is stated in the complainant's bill that Mr. Pratt, the substituted executor, is entitled to the money *for the purpose* of paying it to the Hayes Machanics' Home; and that "under and by virtue of the laws of the state of Pennsylvania, the Hayes Mechanics' Home is now *the only insti-*

tution entitled to the beneficial use of the said residuary estate for the purposes mentioned in said will."

It is difficult to understand how such a claim can be even plausibly asserted. What *title* to this fund can be shown by this or any institution, but the expressed will of the competent trustee of George Hayes, the donor?

How could the "laws of Pennsylvania," by creating a corporation and conferring upon it *power* to accept this gift, confer a *title* to the bounty of this testator? Every instittution in the country formed for such purposes was then and always has been *capable* of taking such a gift. The Hayes Mechanics' Home, by the laws of Pennsylvania, also became capable. But that is all that the laws of Pennsylvania did, or could do for it.

They gave it no *right* to have this or any other bequest.

To make such claim it must show definite action by the person who had the power to make the gift.

There is no proof, or even allegation of such action. It is not proved that Wells assumed to do it, or claimed the power. It *is* shown that J. W. Hayes, who had the power, never dreamed of doing it, but intended to make a different disposition, and that it has been made.

There is no proof of any intention or desire on the part of Wells. He gave certain personal and real estate to this institution in 1864. He never promised to give more if he should ever have it to give, and he was under no obligation to do so. Indeed, it seems improbable that he would have done so if he had lived, and this money had come to his hands for disposition.

For some reason he was removed from his position as treasurer of the Hayes Mechanics' Home in 1873, three years before his death (Case, p. 33). Suppose Mr. J. W. Hayes had brought this fund to him then, in order that they might consult over its application to the trust, could this institution, which had expelled this executor from office

as its treasurer, have demanded this gift from him as a right? And could it have recovered it against the will of Mr. Hayes? It is manifest that it could not. And yet what better title has it now to claim that the disposition made by Mr. Hayes when he was the only trustee shall be overthrown, in order that Mr. Pratt may hold the fund, and confer the bounty upon it?

It is not even alleged or proved that Mr. Pratt has made the gift, or declared his choice in any formal way. The claim is placed on the assumed *right* of this corporation acquired in some unexplained way at the time of its creation. It seems to be thought that it inherited the residuary estate of George Hayes by a sort of right of *primo-geniture.*

There is no foundation for such a claim; nor is there the slightest proof that any lawful trustee of George Hayes ever thought of this corporation as a recipient of the gift, before the time when it was actually given to another.

But it is urged that under the terms of the trust, the whole residue must be applied to a single object. The words of the will show the contrary.

The residue was left to the executor, with power to appropriate and use the income *or* principal for founding and supporting, *or* uniting in the support of *any* institution already founded, &c. No terms could be more general. They were *so* general that a contest might have been made as to the validity of the bequest. The executors could apply the income alone—for an unlimited time—to *any* institution, and could change at pleasure; and the principal when they might choose to do so. The argument used would lead to this, that if they once applied any part of the income of the estate to a specific institution, it was irrevocable, and

the whole residue must be so applied. And that if the beneficiary should let it lie unapplied to any charitable use for 30 or 50 years, still the executors would have no power to withhold any other moneys that might come into their hands, however the trust might be perverted or the funds squandered. This cannot be seriously contended.

It is shown in the proofs that after this suit was brought, the corporation in Philadelphia did at last lay a corner stone, and that just before this argument one building was completed. It appears that after the lapse of nearly thirty years from the testator's death and twenty-two years after the money was paid to it, this corporation has really become capable of fulfilling the charitable purposes of the testator. And photographs of the new building are exhibited in order to show how capable it has at last become.

It is not perceived how this strengthens the title of this corporation to moneys in New Jersey, already applied by lawful authority to another institution which has been actively engaged for nearly twenty years in fulfilling the purposes to which this testator devoted the residue of his estate.

If by the long delayed bounty of others, and the slow accumulation of more than a quarter of a century, some infirm and disabled American mechanics in Philadelphia may, without much more delay begin to receive relief through the bounty of Mr. Hayes; it furnishes no reason why those who have been actually enjoying it in the Hospital of St. Barnabas since the Newark lands of the testator were turned into money, should now be deprived of it.

Nothing but the imperative requirement of settled legal principles could lead to such a result.

It has been shown by abundant authority that no such requirement exists.

It has been suggested that Henry Hayes being an administrator *de bonis non* had no power to dispose of this residue under the directions of the will. It is a sufficient answer to say that he was the administrator *cum testamento annexo*, and not a mere administrator *de bonis non*, and he was expressly empowered to administer the estate *agreeably to the directions of the will.*

The letters testamentary were proved, a copy will be found in the addendum of exhibits. It will be observed that they were issued upon notice to Mr. Pratt, the executor named in the will, and without any objection from him. This was in December, 1882, and if Mr. Pratt had then any design to secure this fund for the Hayes Mechanics' Home he had full opportunity to apply to the court which had jurisdiction of the settlement of the estate in New Jersey. He made no such application. If he had, it would undoubtedly have been resisted by Henry Hayes, the son of the deceased executor—and by Horace H. Nichols, the other alternate named in the will.

Without objection, the power to dispose of the estate here was conferred on Henry Hayes.

He has disposed of it, and the recipients are now in the actual enjoyment of it; they hold the position of beneficiaries of this estate in actual possession.

This foreign executor, and this Pennsylvania corporation have no right to disturb them by this suit, or by any other proceeding. The decree of the Circuit Court should be reversed.

A. Q. Keasbey,
Counsel of Appellant.

Supreme Court of the United States.

No. 246. October Term, 1892.

HENRY HAYES, Administrator, &c., of George Hayes, deceased,

Appellant,

and

DUNDAS T. PRATT, Executor of George Hayes, deceased, and The Hayes Mechanics' Home,

Appellees.

BRIEF FOR APPELLEES.

JOHN R. EMERY,

Counsel for Appellees.

NEWARK, N. J.:
WARD & TICHENOR, PRINTERS, 832 & 834 BROAD STREET.
1892.

Ward & Tichenor, Law Case Printers, 832-834 Broad St., Newark, N. J.

United States Supreme Court.

OCTOBER TERM, 1891. No. 246.

HENRY HAYES (ADM'R *de bonis non*, &C., OF GEORGE HAYES, DECEASED,)
Appellant,
and
DUNDAS T. PRATT (EXECUTOR OF GEORGE HAYES, DECEASED,) AND THE HAYES MECHANICS' HOME,
Appellees.

On Appeal from Decree of the U. S. Circuit Court, for District of New Jersey.

BRIEF FOR APPELLEES.

I.

STATEMENT.

This is an appeal from a final decree made by the Circuit Court of the United States for the District of New Jersey, upon bill, answer, replication and proofs, and directing that the appellant pay to the appellee, Dundas T. Pratt, as treasurer of the appellee, The Hayes Mechanics' Home, and for its use, the sum of $5,123.27, with interest from January 10th, 1884, being the balance remaining in the hands of the appellant, as administrator of the estate of George Hayes in the State of New Jersey, on the settlement of his account as such administrator, in the Orphans' Court of Essex County,

N. J., and also directing that the appellant pay the complainant's taxed costs of suit, (*Record*, pp. 77 and 78.)

This decree was made in a suit in equity upon a bill filed by Dundas T. Pratt, as executor of the last will and testament of George Hayes, deceased, appointed by the Orphans' Court of the city and county of Philadelphia, and the Hayes Mechanics' Home, a corporation of Pennsylvania, as complainants, against Henry Hayes, as the administrator of the goods, chattels and credits of said George Hayes, deceased, in the State of New Jersey, left unadministered therein, and appointed by the Orphans' Court of the county of Essex in the State of New Jersey. The object of the bill was to compel the defendant to pay over the balance which remained in his hands on the settlement of his account in the Orphans' Court. This balance was the proceeds of sales of real estate which was included in the residuary devise of the testator's real estate, and which residuary estate was devised to the executors upon certain charitable trusts. The complainant, the Hayes Mechanics' Home, was incorporated under the laws of Pennsylvania for the purpose of carrying out these trusts, and claimed to be entitled to the balance in the administrator's hands, which should be paid either to the complainant executor, for the purpose of paying over to the Home, or directly to the Home. The Circuit Court (Judges McKennan and Butler both hearing the cause) directed that the fund be paid direct to the Hayes Mechanics' Home. By the by-laws of this institution (*Amendment to Record*, p. 15, Art. 4,) the treasurer is the custodian of all moneys paid to the corporation. The suit was commenced by bill filed in the Court of Chancery of New Jersey on August 11, 1884, and was duly removed to the United States Circuit Court on October 31, 1884, before answer

filed by petition of removal, under the act of March 3, 1875, (*Record*, pp. 74 and 75.)

The material facts established by the pleadings and proofs are as follows: George Hayes, the testator, at the time of his death, was, and for more than ten years had been, a resident of Philadelphia, engaged in the manufacture of jewelry, (*Dreer*, *Rec.* p. 19, &c.) He died in June, 1857, leaving no wife or children (*Ibid.*), and owning, at the time of his death, besides considerable personal estate, real estate consisting of a house and lot on Sixteenth street, in the city of Philadelphia, a tract of land in Michigan, (*Ibid.* 20,) and a lot on Broad street in the city of Newark, together with an undivided fourth interest in another lot, 26 feet front, on the same street, (*Bill*, p. 4, par. 2; *Ans.* p. 12, par. 2; *Proofs*, pp. 45 and 46.) His will, dated June 16, 1855, after providing for the payment of his debts and of several legacies, provided as follows in reference to the residue of his estate, (*Record*, p. 11):

"Item. As to the rest, residue and remainder of my estate, both real and personal, and of every nature and kind whatsoever, I give, devise and bequeath the same to my executors hereinafter named, their heirs, executors and administrators forever, in trust, to realize the same in the manner deemed by them the most advisable, and keep the same invested in such manner as they, in their discretion, may deem most advantageous, and to appropriate and use the income or principal thereof for the purposes of founding and supporting, or uniting in the support of any institution that may be then founded, to furnish a retreat and home for disabled or aged and infirm, and deserving American mechanics.

"Item. To better enable my said executors to carry out and perfect my intentions as expressed in the last foregoing item, I authorize and empower them to sell all or any of my real estate, either at

public or private sale, either for cash or part cash, and reserving ground rent or taking mortgage for the purchase money, as the case may be, without any liability of the purchaser or purchasers thereof, as to the application or misapplication of the purchase or consideration moneys.

"Lastly. I nominate, constitute and appoint my brother, Jabez W. Hayes, and my friend, Dr. Lewis E. Wells, (and in the event of the death of either or both of them, then I appoint, first, Dundas Pratt, and next, my brother-in-law, 'Horace H. Nichols,' to supply vacancy,) to be the executors of this, my will, and declare this to be my last will and testament, hereby revoking all or any wills by me heretofore made."

The will was proved in Philadelphia on the 20th of June, 1857, by Lewis E. Wells, one of the executors, and letters testamentary were granted to him—the other executor, Jabez W. Hayes, not taking out letters in Philadelphia, (*Bill*, p. 4, par. 5, *Ans.* p. 13, par. 4.) In June, 1858, the Hayes Mechanics' Home was incorporated under the general laws of Pennsylvania, on application to the Justices of the Supreme Court, to carry out this trust, the sole object expressed in the certificate, (following the language of the will,) being "The purpose of founding a home for disabled, aged or infirm and deserving American mechanics," and to be called, as a memorial of its founder, "The Hayes Mechanics' Home, (*Exhibit* No. 4, *Compl't's Amendment to Record*, pp. 11, &c.)

Lewis E. Wells, the executor who had proved the will, and Dundas T. Pratt, the substituted executor, were two of the corporators, (*Ibid.* p. 13) For further securing this charter of the Home, an act was passed by the legislature of the State of Pennsylvania, on the 16th day of March, 1861, reciting that The Hayes Mechanics' Home was incorporated

for the purpose of carrying into effect the charitable objects provided by the last will and testament of the said George Hayes, at the instance of Lewis C. Wells, the acting executor; and the act then ratified and confirmed this charter, and constituted the incorporators named therein a body corporate, and empowered this corporation to take and hold the real and personal estate devised and bequeathed by the last will and testament of the said George Hayes, for the purpose declared in his will, (*Exhibit* No. 3, *Compl't's Amendment to Record*, p. 9.)

Upon the settlement of the accounts of Lewis E. Wells, the executor, a balance of over $14,700, remaining in his hands of the personal estate belonging to the residue of the estate, was paid over to the Home by order of the Orphans' Court of the county of Philadelphia, the real estate remaining still unsold. The Hayes Mechanics' Home on June 17, 1864, applied to the Orphans' Court of the County of Philadelphia for an order directing that the real estate be conveyed to it, instead of being sold by the executor, and on this petition an order was made by the Court on September 23, 1864, directing that the executor convey to "The Hayes Mechanics' Home" the real estate described in the application, (*Exh.* No 1, *Compl't's Amendment to Record*, pp. 2-6.) (*Note*-The petition, which was signed by Dreer, the President, stated the real estate, of which George Hayes died seized, to be the house and lot in Philadelphia and the tract of land in Michigan, not mentioning the New Jersey real estate. *Ibid.* p. 2.) Mr. Pratt says (*Record*, p. 24,) that at the time of filing this petition neither he nor any other officer of the Home knew that the testator owned this real estate in New Jersey; that his first knowledge of it was after the death of Jabez W. Hayes. Pursuant to this decree the lands in Philadelphia and Michigan were conveyed to the Home by Lewis E. Wells, the executor, by deeds dated November 7, 1864, (*Exhibits*

Nos. 5 and 6, *Compl't's Amendment to Record*, pp. 17 to 19.)

The Hayes Mechanics' Home has thus received all the residuary real and personal estate of the testator, for the purpose of carrying out this trust, except the proceeds of the sale of the real estate in New Jersey, and has entered on the fulfillment of the trust by purchasing a large tract of land at Belmont, near the Park, in Philadelphia, and by erecting large and attractive buildings, and the institution is now a noble memorial to the name and charity of its founder. As to the real estate in New Jersey, the situation is as follows: Jabez W. Hayes, the brother of the testator, and one of the executors named in the will, proved the will in Essex county, N. J., on August 14, 1857, and after the probate of the will in Philadelphia, (*Bill*, p. 7, par. 13; *Ans.* p. 14, par. 9,) he took possession of the real estate, which was the only property in New Jersey belonging to the estate, (*Henry Hayes, Record*, p. 33,) and received the rents and profits, never rendering any account up to the time of his death in 1882. (*Bill*, p. 7, par. 13; *Ans.*, p. 14, par. 9.) On his death his son, the defendant, Henry Hayes, was, on December 22d, 1882, appointed by the Surrogate of Essex county administrator of the goods, chattels and credits of George Hayes, in the State of New Jersey, left unadministered by Jabez W. Hayes(*Bill*, p.7, par. 15; *Ans.*, p. 14, par. 10; *Proofs*, p. 37.) Notice of the application for this appointment was sent to the complainant, Mr. Dundas T. Pratt, and he at once notified the defendant of the claim of the Hayes Mechanics' Home to the proceeds of the estate. (See *Record*, pp. 65 and 66; letters of November 15, 1882, and November 24, 1882.) In June, 1883, the defendant advertised the property for sale, and in answer to a letter from Mr. Pratt, about the sale, wrote him that he would not dispose of the money arising from the sale without giving him an opportunity to claim it for the Home. (*Letter*, June 25,

1883; *Record*, p. 41.) After the sale he settled his accounts as administrator, *de bonis non*, in the Orphans' Court of the County of Essex, and by its decree, dated January 8, 1884, the balance in his hands, as administrator, was settled at $5,153.27. (*Bill*, p. 7, par. 15; *Ans.*, p. 14, par. 10.) Without any further communication with Mr. Pratt, and without his knowledge, the defendant in May, 1884, paid over the fund to the Hospital of Saint Barnabas, in Newark, on receiving from the hospital a bond of indemnity in the penal sum of $10,000, secured by a mortgage upon the real estate of the hospital, (*Henry Hayes*, *Record*, p. 38; minutes of May 8, 1884; *Record*, pp. 70 and 71.) The Hospital of Saint Barnabas was incorporated by an act of the legislature of the State of New Jersey, approved Feb. 13, 1867; is practically an institution for the treatment of the sick, and its by-laws provide that no patient shall be allowed to remain in the hospital when in a condition to be discharged; and that all patients whose disease may be incurable be removed with the least possible delay. (*Defendant's Exhibit No. 1*, *Amendment to Record*, p. 26; By-Law 10, Sec. 3.)

The rules concerning admission provide only for the admission of persons suffering from disease or accidents, require pay from patients who are able to pay for their maintenance, and at the death of patients maintained at the expense of the hospital appropriate their personal effects. (*Rule* 2, par. 11, p. 28.) The money received from the administrator was recieved and appropriated as part of the general funds of the hospital, and by way of carrying out the charitable trust of Mr. Hayes' will, *two beds* in one of the long wards of the hospital have been, (or are resolved to be,) devoted to this purpose, (*Record*, p. 72,) and a tablet has been (or is to be,) placed on the wall between these two beds, bearing the inscription in brass: "George Hayes' Memorial for the Care of Aged, Infirm and Disabled American Mechanics." (*Ward*, *Record*, p. 59.)

The first knowledge which Mr. Pratt had of this payment to the hospital was from the defendants' answer in the cause, (*Pratt, Record*, p. 30.) Mr. Lewis, the original executor, had died in 1876, (*Bill*, p. 7, par. 14; *Ans.* p. 14, par. 10; *Pratt*, p. 31,) and on May 10, 1884, letters testamentary were granted to the complainant, Dundas T. Pratt, as the succeeding executor named in the will by the Orphans' Court of Philadelphia, (*Record*, p. 73.)

The general questions involved in the case are (1) whether the Hayes Mechanics' Home is such institution as was contemplated by the will for the purpose of carrying out the charitable trusts, and is entitled to the residuary estate for that purpose as the sole beneficiary; (2) whether the appellant, as administrator *de bonis non*, appointed in New Jersey, a State other than the domicile, has any right or power under general laws, or under the laws of the State of New Jersey, to select an institution in that State to receive any portion of the residuary estate for the purpose of excuting the trusts; and if he has such right, (3) whether the hospital of Saint Barnabas is a proper institution for the purpose.

Upon the these questions I submit the following points:

First. The appellee, the Hayes Mechanics' Home, as the institution founded for the purpose of carrying out the charitable trusts of the will, with the approval of the executor, confirmed and ratified by the legislature and courts of the place of domicile, is the sole beneficiary entitled to the residuary estate. (First Point, *infra.*)

Second. The appellant had no power to select the institution or disposition of the trust funds, (1) because he was merely an ancillary or auxiliary administrator, appointed in a State other than that of the domicile, and as such ancillary administrator,

is bound to account for the balance in his hands to the primary or principal executor, or directly to the beneficiary selected by him ; (Second Point, *infra.*) (2) because he was also merely an administrator *de bonis non*, and as such had no power, either under general law or the statutes of New Jersey, to execute such trusts. (Third Point, *infra.*)

Third. The Hospital of Saint Barnabas was not such an institution as was contemplated by the testator, and payment of the fund to it by the appellee was a breach of trust. (Fourth Point, *infra.*)

I shall also submit,

Fourth. That the payment to the hospital was shown to have been a breach of trust, under such circumstances, as entitled the appellees to a decree that the appellant pay interest and costs. (Fifth Point, *infra.*)

FIRST POINT.

Under the will of the testator the fund was properly directed to be paid over to the complainant, the Hayes Mechanics' Home, as the institution founded for the purpose of carrying out the charitable trusts of the will, and entitled to the residuary estate for that purpose.

This right to the fund is based on the following considerations :

First—The Home was the institution founded by the consent of the executor, who proved the will in the place of the testator's domicile, for the purpose of receiving the residuary estate and carrying out the trusts of the will, and this selection has

also the approval of Mr. Pratt, the succeeding executor, also appointed by the courts of the domicile.

Second—This selection of the Hayes Mechanics' Home, as the proper institution to carry out the trust, has been ratified by an act of the legislature of the State of the domicile, (see the charter of incorporation.) *Exhibits 2, 3 and 4, for Compl't's., Amendment to Record*, pp. 8–14.

Third—The courts of the domicile have recognized the Hayes Mechanics' Home as the proper institution to carry out the trusts of the testator's will, by directing payment to it of the balance in the hands of the former executor of the will, and the conveyance to it of the lands of the testator. This could only have been done upon the adjudication that the Hayes Mechanics' Home was entitled to the sole benefit of the residuary bequest. See *Compl't's Exhibit No. 1, Amendment to Record*, pp. 2–6.

That the courts of the domicile have this power of judicial determination is affirmed in *Russell* v. *Allen*, 107 U. S. 163, (1882.) In this case the institution to be founded for the education of youth in St. Louis, Missouri, had not been incorporated at the time of filing the bill, and the heirs-at-law and next of kin of the grantor, filed a bill against the executors of Allen, to whom the lands embraced in the trust deed, (or the proceeds of sale,) had been conveyed for the purpose of executing the trust, claiming that Allen controlled the whole property, and had in no way, during his lifetime, recognized the fund as held for the uses declared in the deed, or taken any steps to carry out the trust. They attacked the validity of the trust declared, and prayed an accounting. The Court, after sustaining the trust as a valid charitable trust, say, on p. 173, Mr. Justice GRAY delivering the opinion of the Court:

"The money paid and the lands conveyed by Horner, (the grantee in the trust deed,) to Allen, stand charged in the hands of Allen and his executors with the same charitable trust to which they were subject in the hands of Horner. Steps to organize such an institution, as is described in the deeds, may be taken either by the Attorney-General or other public officer of the State, or by individuals. Whenever an institution for the education of youth in St. Louis shall have been incorporated and shall claim the property, it will then be a matter for judicial determination in the proper tribunal, whether it meets the requirements of the gift."

The jurisdiction of the Orphans' Court in Pennsylvania extends to and embraces—(see Purdon's Digest, 1853, *Orphans' Courts*, Sec. 8.)

2. The settlement of accounts of the executors and administrators.

3. The distribution of the assets and surplusage of the estates of decedents after such settlement, among creditors and others interested.

7. Proceedings for the recovery of legacies.

8. All cases within their respective counties, wherein executors, administrators, guardians or trustees may be possessed of or are in any way accountable for any real or personal estate of a decedent.

(This Court has concurrent jurisdiction with the Common Pleas in all cases of testamentary trusts; see cases cited in *Purdon, supra*, note M.)

If these acts on the part of the executor proving the will, in the place of the domicile confirmed and ratified by the legislature and the courts of Pennsylvania, are not of themselves sufficient to conclude the question whether this Home is the sole proper beneficiary of the trust, I then submit that this Court will now ratify this choice as the *sole* proper selection; because,

Fourth. The testator contemplated that the trust fund should come to the possession of *but a single beneficiary.* This might be an institution, founded by his executors, or another institution in the support of which they should unite, but the language of the will is that the executors of the will are to appropriate and use the principal or income thereof for the purpose of founding and supporting or uniting in the support of *any institution* that may be then founded, to furnish a retreat and home for disabled or aged, infirm and deserving American mechanics. The testator contemplated no *division of the fund between institutions*, but contemplated that the whole of his property should go to a single institution, either one to be founded by the executors, or some institution existing at the time of his death, to be selected by them, as the beneficiary of the fund. In this case the executors, after the death of the testator, decided to found an institution, and thus exercised their option given under the will, and their *determination is final under the will.* The present attempt of the administrator in a foreign State to divert a portion of the residuary estate to the benefit of another institution, not existing at the testator's death and formed in a foreign State, is wholly outside of the intention of the testator, and is not authorized by his will.

In *Pulliam* v. *Pulliam*, 10th Fed. Rep. 23, it was held that an executor, qualifying in the State of the domicile of the testator has title to the trust property wherever situated, *and cannot separate the trust created* by the will in several States, and also, that the executor must *execute the will in* another State if the real property is situated there, and do all that is necessary for that purpose, and that the domiciliary executor under the will making him testamentary trustee becomes *charged with trusts of the will upon general principle* of law, and is wholly unaffected by State statutes and

decisions limiting his liability in relation to property in another direction. (See especially pp. 41, etc.)

As to the character of the institution and the success of its corporators and managers in founding a home, which is one of the notable charities in a city rich in these monuments of brotherly love, I refer the Court to the evidence of Mr. Pratt, on pages 24 to 28, etc.

There was some delay in the selection of a proper site, and in the erection of the buildings; but this delay was utilized in accumulating the funds and procuring additions to it, until the gift of Mr. Hayes, which amounted only to $30,000 at the time the Home received the property, swelled to nearly $100,000, besides the cost of the Belmont property of sixteen acres, (*Complt's Exhib.* No. 12. *Amendment to Record*, p. 20. *Pratt, Record*, p. 31.) Being now in a financial position to carry out the testator's trusts, the Home at once commenced the erection of the necessary buildings, which were in progress when the bill was filed and were finally completed before the hearing. It was dedicated and formally opened in May, 1886. (For the proceedings of the *Home*, in reference to this trust, from its organization to May, 1885, see the extracts from its minutes. *Record*, pp. 67 to 69.)

The Hayes Mechanics' Home, having been incorporated for the sole purpose of carrying out this trust, not only by incorporation under general laws, but also by a special charter expressly creating it to execute this trust, and authorizing it to receive the residuary real and personal estate for that purpose, has, under this charter, a vested right to this residuary estate, of which it cannot be deprived, either by act of the legislature itself or any subsequent action of the executors of the will or any of them. The doctrine of the Dartmouth College case applies, and the only question for any

court to determine, upon its application for the residuary estate, is whether it is fairly and in good faith executing the trusts.

SECOND POINT.

As to the authority and duty of an executor or administrator in a State other than that of the domicile, in reference to the estate remaining in his hands after payment of the debts due in the State of his administration.

As to the relation between administrations granted in different States or countries, upon the estates of decedents, Mr. Justice STORY, in *Conflict of Laws*, Sec. 518, says:

> "Where there are different administrations granted in different countries, that is deemed the principal or primary administration which is granted in the country of the domicile of the deceased party; for the final distribution of his effects among his heirs or distributees is to be decided by the law of his domicile. Hence any other administration which is granted in any other country, is treated as in its nature ancillary merely, and, as we have seen, generally held subordinate to the original administration."

As to the authority of the courts of the place of ancillary administration over the distribution of the funds in the hands of the ancillary administrator, after payment of all the debts and legacies due in the place of ancillary administration, the general rule is, that on the application of the primary administrator, or of any proper party, the courts in the place of ancillary administration, will direct the

ancillary administrator to remit the funds to the place of domicile, for the purpose of distribution there. They may, however, in their sound discretion, take upon themselves the distribution of the fund, but in such cases the fund must be distributed according to the law of the domicile.

These principles are too well established and familiar to require any extended citation of authorities, but for convenience of reference, the following extracts from the authorities are printed:

Story on Conflict of Laws, 7th edition, Section 513: "The new administration (in a State other than that of the testator's domicile) is treated as merely ancillary or auxiliary to the original foreign administration, so far as regards the collection of the effects and a proper distribution of them. Still, however, the new administrator is made subservient to the rights of creditors, legatees and distributees who are resident in the country where it is granted; and the residuum is transmissible to the foreign country only when a final account has been settled in the proper tribunal where the new administration is granted, upon the equitable principles adopted by its own law in the application and distribution of assets there." And cases cited in note 2, especially *Harvey* v. *Richards*, 1st Mason, 381. This case was decided by Justice STORY, and is very fully set out in the note; it contains a full examination of the principles which govern the administration of the estate as between the principal and auxiliary administrator, and in reference to the remission of the funds to the forum of the domicile, says, p. 413: "It may be admitted, also, that there are cases in which it would be highly convenient to decline the jurisdiction, (of distributing the effects belonging to foreign testator,) and remit the funds to the forum domicilii.

Where there are no creditors here, and no heirs or legatees here, but all are resident abroad, there can be no doubt that a court of equity would direct a remittance of the property upon application of any competent party."

In *Wilkins* v. *Ellett, Administrator*, 9th Wallace, 740 and 742, Mr. Justice NELSON, upon the subject of the relation between the original and ancillary administrators, speaks as follows in reference to the letters of ancillary administration: "These letters are regarded as merely ancillary to the original letters, as to the collection and distribution of the effects; and generally are simply made subservient to the claims of the domestic creditors, the *residuum being transmitted to the probate court of the country of the domicile, for the final settlement of the estate.*"

In *Walker* v. *Walker*, 9th Wallace, 743, it was held that the Federal Courts, where they have jurisdiction, will enforce, for the furtherance of justice, the same rules in the adjustment of claims against ancillary executors that the local courts would do in favor of their own citizens. See further on this point, page 754. In 3d *Williams on Executors*, 1663, (Perkins' edition, p. 1762,) it is said, "That administration is deemed the principal or primary one, which is granted in the country of the domicile of the deceased. Each portion of the estate must be administered in the country in which possession of it is taken and held under lawful authority, and the only mode of reaching such assets in the hands of the foreign administrator, is to require their transmission or distribution after all the claims against the foreign administrator have been duly ascertained or settled." Cases

cited in note K, as follows: "If, after the payment of debts and expenses, in the place of ancillary administration, there is a surplus remaining in the hands of the ancillary administrator, the tribunal in which the ancillary proceedings are pending will order him to pay it over to the executor or principal administrator. The only way in which the principal and ancillary administrations can legally have any dealings with each other would be under such order."

Banta v. *Moore*, 2d McCarter, 97, (1862,) 15 N. J. Eq., Chancellor GREEN, on page 101, says: "Where administration has been granted in the place of the testator's domicile, and auxiliary administration for the purpose of collecting debts has been granted in a foreign jurisdiction where the personal estate or any part of it may be situated, or the debtor resides, *all that can be required, if the fund in the hands of the foreign administrator is needed for the purposes of due administration in the place of the domicile, is its transmission or distribution after all the claims against the foreign administrator have been duly ascertained and settled.*" Citing St. Conf. Laws, § 513, &c.

There is the additional reason in this case that the testator intended that the executor should convert the estate into money, and this as personal estate should be remitted to the forum of the domicile for distribution.

That the distribution of the estate is to be according to the law of the domicile, is settled by the following cases:

Ennis v. *Smith*, 14 How., 400, establishing that in case of intestacy personal property is distributable according to the law of the testator's domicile. See especially page 425, in which, after stating the general rule, Justice

WAYNE also states: "The rule prevails also in the ascertainment of the person who is entitled to take as heir or distributee." *Story on the Conflict of Laws*, Sec. 518.

Lewis, Admr., v. *Grognard*, 2 C. E. Gr. 17 N. J. Eq. 425, (Prerogative Court, 1865,) GREEN, Ordinary, on page 428, says: "*The distribution of the fund must be regulated by the law of the domicile of the intestate, but whether that distribution shall be made by the tribunals of the several States by which letters are granted*, or whether the balance for distribution shall be transmitted by the foreign administrator to the place of the domicile, to be there distributed, depends upon circumstances, and rests in the sound discretion of the tribunal before which the account of the foreign administrator is brought for settlement. Where parties interested in the distribution reside in the State where foreign administration is granted, the fund will be retained and distributed here." Citing cases

In *Taylor's Executors* v. *Trustees of Bryn Maur College*, 7 Stew. (34 N. J. Eq.) 101, (1881,) a resident of New Jersey, by his will, gave the residue of his estate to eleven trustees and the survivors of them in trust, as soon as a corporation should be established under the laws of Pennsylvania, for a college or institution of learning, to convey and transfer the residue of his estate to this corporation. On a bill filed by the executors for instructions, Chancellor Runyon held that the trust was a valid charitable trust; that the Court of Chancery of New Jersey could not administer a foreign charity, but would commit the fund to a foreign corporation, organized under the laws of the State where the charity was to be administered, if, by the law of its creation, the corporation had the requisite powers and competency in the premises, and the

Court was fully satisfied as to the qualifications of the corporation.

In New Jersey, the Court of Chancery has general equity powers and jurisdiction, and is the proper Court to which to apply for directions as to the management of trusts, the construction of wills or the distribution of estates.

By statute of 1872, (*Pamphlet Laws*, 1872, p. 47, *Revision of 1877*, p. 785, par. 151 of Orphans' Court act,) the jurisdiction of the Orphans' Court which previously had no power to construe wills or order distribution in cases other than of intestacy, was extended, and it was provided that "In all cases where any executor or administrator, *cum testamento annexo*, shall have filed any account exhibiting the balance of any estate in his or her hands, up to the date of filing the same, and such account shall have been duly allowed by the decree of the Orphans' Court of any county of this State, it shall be lawful for the said Orphans' Court, upon the application of any party in interest, to adjust, order and make distribution in accordance with the directions and provisions of the last will and testament in each case, of what shall remain after all debts and expenses shall have been allowed and deducted." This provision probably confers the incidental power upon the Orphans' Court to construe wills in certain cases as necessary for the legal distribution of the estate; but even if it does extend to the distribution of a residue claimed under a foreign will, which I deny, (see *Harvey* v. *Richards*, 1 Mason, p. 420,) yet this new jurisdiction of the Orphans' Court has not deprived the Court of Chancery or the Circuit Court of the United States of its equitable jurisdiction over trusts and the administration of estates.

See *Frey* v. *Demarest*, 1 C. E. Gr. (16 N. J. Eq.) 236, 237, Chancellor GREEN, 1863. In all cases of importance, involving construction of will and trusts, it is usual, even since the statute, to proceed

in the Court of Chancery, because the Chancellor is the Ordinary who hears appeals from the Orphans' Court, and thus one stage of litigation is saved.

Besides, the question *now* is, as to the jurisdiction of the United States Court to construe the will, and as to this there can be no doubt, the contest being between citizens of different States.

See *Walker* v. *Walker*, 9 Wall. 754, where Justice DAVIS says: "The Circuit Courts of the United States, with full equity powers, have jurisdiction over executors and administrators, where the parties are citizens of different States, and will enforce the same rules in the adjustment of claims against them that the local courts administer in favor of their own citizens."

In the State of New Jersey, and by virtue of a law in force at the time of commencing this suit, (*Laws 1879*, p. 28; *Supplement to Revision*, p. 294, par. 3,) an executor or administrator, by virtue of letters obtained in another State, might prosecute any action in any courts of New Jersey upon filing, on the commencement of the suit, in the office of the Clerk of the Court in which suit is brought, an exemplified copy of the record of his appointment. This was done in this case, (*Record*, p. 12, also pp. 73, 77.) By a later act, passed since the commencement of this suit, it is only necessary to file an exemplified copy of his letters of appointment, (*Session Laws of 1887*, page 154.)

In the argument of the cause in the Court below, the counsel for the appellant claimed that there was an agreement between Jabez W. Hayes and Louis E. Wells, the original executors, to separate the estates in New Jersey and Pennsylvania.

As to this I reply, that no such agreement was proved. There is no pretence of any agreement upon the part of Wells, the original executor in

Pennsylvania, that any institution except the Home should have any portion of the estate; neither is there any evidence of any act on the part of Jabez Hayes, the original New Jersey executor, by which he selected the hospital.

At the time of his death the lands had not been sold and the time for selection had not arrived. But the principal answer to this claim is, that if there was any such agreement, it was wholly illegal and ineffectual, inasmuch as the *whole* estate of a testator must be disposed of according to his will, and according to law. No agreement or course of conduct between trustees can be allowed to divert the fund. There is no pretence of any agreement on Wells' part that any institution except the Home should have any portion of the estate.

If Wells was derelict in his duty to look after the New Jersey assets, this is no reason for refusing to allow the present executor to follow them. He never knew of the real estate in New Jersey until after the death of Jabez W. Hayes. (*Record*, p. 24)

The assumption that there are in law two *separate estates* of the testator, one in New Jersey and one in Pennsylvania, wholly ignores the fundamental idea of primary and ancillary administrators, as established by the cases above referred to. No agreement between the separate executors, as to disposing of the property can alter these relations, or discharge either of them from the fulfillment of the trusts of the will.

THIRD POINT.

As to the authority of an administrator de bonis non cum testamento annexo, under General Laws, and under the Statutes of New Jersey.

In reference to the nature and extent of such authority, the appellees claim that neither under the general rules of law, nor under the statutes of New Jersey, has an administrator *de bonis non*, in the place of domicile or primary administrator, any right to execute charitable trusts of the character now in question, and that much less can an administrator *de bonis non*, in a place of ancillary administration, execute such trusts as are to be carried out in the place of domicile or primary administration. The statutes of New Jersey confer upon an administrator *cum test. ann.* in certain cases the capacity to execute powers of sale given by will to the executor whom he succeeds; but, as will appear from the statutes themselves, and the decisions of the New Jersey courts construing them, the power cannot be executed where there is any trust or confidence imposed in relation to the sale, nor does the capacity of the administrator *cum test. ann.* in any case extend to assuming the powers or duties given to the executor over the proceeds of sale, or to executing any trust relating to them.

(1) As to the authority of an administrator *de bonis non*, under the general principles of law, the opinions in this Court have settled its nature and extent.

In *Beall* v *New Mexico*, 16 Wall. 535, (1872,) the question was, whether an administrator *de bonis non*, could, for the benefit of the estate, maintain an action on the bond of the original administrator for his defaults and devastavits. Mr. Justice BRADLEY, on pp. 540 and 541, discusses the question, and says: "That, as the law is understood in England and those States which derive their principles of

jurisprudence from England, the administrator *de bonis non*, has no such right of action, unless by statute, and that the original administrator or his representatives are accountable directly to the persons beneficially interested in the estate." He further says, on p. 541:

"To the administrator *de bonis non* is committed only the administration of the goods, chattels and credits of the deceased which have not been administered. He is entitled to all the goods and personal estate which remain in *specie*. * * * And all assets of the testator or intestate in the hands of third persons, at the death of the administrator or executor intestate, belong to the administrator *de bonis non*."

In *United States* v. *Walker*, 109 U. S. 258, the above case was approved, and it was held in this case, that an administrator *de bonis non* could not maintain a suit against the surety of a former administrator, to recover damages for the failure of the former administrator, who had been removed, to pay a claim against the United States due the intestate, and collected by the former administrator.

Wilson v. *Arrick*, 112 U. S. 83, 87, again approves and follows the rule.

In *Ingle* v. *Jones*, 9 Wall. 486, (1869,) one question was, as to whether an administrator *de bonis non*, appointed under a statute of Maryland, could exercise any authority over real estate, Mr. Justice SWAYNE says, (pp. 497 and 498:) "The Maryland statutes which bear upon the subject provide for the appointment of an administrator *de bonis non*, but are silent as to his powers. By the common law his duties are confined to the personal estate unadministered by his predecessor. Whatever authority he may possess as to real estate must be derived from the will. If not found there in express terms, or by necessary implication, it has no existence. Hence the test in all such cases is the

intention of the testator; many of the duties enjoined upon the executors were foreign to those which come within the scope of their ordinary functions; *such a power never passes by devolution to an administrator*, unless it be clear that it was the intention of the testator that he should become the donee of the power, in place of the executor appointed by the will. If no provision be made by the will for such substitution the power does not become extinguished, but the case falls within the category of those where a court of equity will not permit a trust to fall for want of a trustee, but will appoint one, and clothe him with authority adequate to the duties to be discharged. In the case under consideration it is clear that the testatrix did not intend that any one not clothed with the sanction she prescribed should be intrusted with any duty touching her estate. The administrator occupies the same relation to the realty as if he were administrator *de bonis non*, without the will annexed, and the testatrix had died intestate."

As to the power and authority of an administrator *de bonis non*, in the absence of statutes, see also *2d Williams on Executors*, *961, *Perkins' Edition*, p. 1028, and cases cited in note N, and also *Perry on Trusts*, (3d Ed.,) § 500, as to the general rule that administrators, *cum test. ann.*, have no power to execute discretionary trusts or personal confidences, and that the statutes in the several States do not extend their powers to these cases.

Ibid. § 508, as to powers which are *trusts*, as in this case, and powers which are purely discretionary, which the Court will not require the donees to execute.

(2) As to the powers under the N. J. Statutes. The statute governing this matter is the 11th section of act concerning executors and administrators, approved March 27, 1874. (Revision of 1877, p. 398, Sec. 11,) which provided :

"SEC. 11. Any deed of conveyance heretofore made and delivered, or which may hereafter be made and delivered, by any administrator or administrators with the will annexed, or the survivors or survivor of them for, any lands, tenements, hereditaments or real estate, sold pursuant to any power or direction in the said will annexed, given to or vested in the executor or executors named therein, shall be as good, valid and effectual as if the same had been or were made and delivered by the executor or executors named in said will; and such administrator or administrators with the will annexed, and the survivor or survivors of them shall have the same powers and authority, and no other, as were given to or vested in, or may hereafter be given to or vested in the executor or executors named in the will, unless where otherwise expressly provided in the same; and in case of the death or incapacity of such administrator or administrators with the will annexed, and the appointment of an administrator or administrators *de bonis non*, with the will annexed, the same power and authority shall be vested in him or them, and the survivor of them, as were vested in the administrator first appointed."

This was Section 20 of the Revised Statutes of 1846, p. 350, and confirmed in the administrator, *cum test. annexo*, only the power of sale, which was given to the person or persons holding the office of executor. It did not, however, confer any power upon this administrator, *cum test. annexo*, to execute any trusts which devolved upon the executor in relation to the proceeds of sale, and the courts of New Jersey have even confined the power of sale conferred by this statute to cases where the power to sell was not coupled with any trust or confidence. A leading case is

Naundorf v. *Schumann*, 14 Stew., (41 N. J. Eq.) 14, (Chancellor RUNYON, 1886.) Here the testator gave all his property for the sole use and benefit of his wife, and in the event of her death, "then what shall remain * * * the whole to be disposed of as to my executors may seem best," the proceeds to be divided equally among certain specified persons. Chancellor RUNYON says, p. 15: "If the power were merely to sell the lands and divide the proceeds, it could lawfully be exercised by the administrator with the will annexed. *Rev.* 398, Sec. 11; *Howell* v. *Sebring*, 1 McCarter, (14 N. J. Eq.,) 84. but, although the direction to convert is absolute, it is coupled with a trust or confidence in the executors, who are to sell as 'may seem best' to them; that is, they are to exercise a discretion in making the sale. This is a personal trust and confidence which does not devolve upon the administrator with the will annexed. The administrator cannot execute the powers." Citing *Chambers* v. *Tulane*, 1 Stock. 146; *Brush* v. *Young*, 4 Dutch. 237; *Lanning* v. *St. Francis' Hospital*, 8 Stew. (25 N. J. Eq.,) 400.

In this last case cited Chancellor RUNYON says, p. 400: "While a naked power of sale would, by virtue of the statute, devolve upon the administrator, a *trust*, in the absence of any provision in the will that it shall do so, does not." Citing *Brush* v. *Young*. The construction of the statute was settled by the Supreme Court in the case of *Brush* v. *Young*, 4 Dutch. 237, (1860,) where Chief Justice WHELPLEY says, pp. 242 and 243, that the act does not vest the *trusts* of the will in the administrator, and that this seems to have been designedly provided against, and that the design of the section seems to have been to supply the place of an executor, by giving power to execute power of sale, &c., to the administrator, *cum test. annexo.*

In New Jersey a *new trustee* is appointed in these cases to execute trusts which require to be executed, and which fail by reason of the death of the executor who is made trustee. I submit, therefore, that neither under the will nor under the New Jersey laws, has the defendant administrator, *de bonis non*, any right to execute this trust, or to choose the beneficiaries.

The complainant, Pratt, the only executor to whom the selection was confided by the will, is entitled to dispose of the fund if the Court should be of opinion that the selection by Wells and the action of the courts of Pennsylvania thereon are not final and conclusive. The Court will give the selection to the trustees, who has assumed the duties of the trust.

FOURTH POINT.

Saint Barnabas Hospital, to which the appellee has given this fund, is not an institution of the character intended by the testator.

The late Mr. Justice BRADLEY, in speaking for the Court, in the great Mormon Church case, says, (136 U. S. 51,) that a leading and prominent principle prevailing in the laws relating to charities is, "that property devoted to a charitable and worthy object, promotive of the public good, shall be applied to the purposes of its dedication, and protected from spoliation and from diversion to other objects." Applying this principle to the facts proved in this case relating to this hospital, I insist that the payment of this fund was a diversion of the trust fund to an institution wholly different from the one intended by the testator.

This institution is under sectarian management, and is practically a hospital—an institution purely

and simply for treatment of the sick—and has always been recognized and carried on as such. It was incorporated by act of the legislature of the State of New Jersey, approved Feb. 13, 1867, (*Pamphlet Laws, 1867*, chapter 32, p. 51,) a public act. The corporators named and their successors, being *members and communicants of the Protestant Episcopal Church*, and residents of the county of Essex, were incorporated as "The Hospital of Saint Barnabas"; the Bishop of the diocese, being eligible also as a corporator and trustee, although a non-resident of the county, (*Sec. 1.*) The object of the incorporation was declared to be the care, nurture and maintenance of sick, infirm, aged and indigent persons, and of orphan, half-orphan and destitute children, the providing for their temporal and spiritual welfare, and the procuring and erecting of a suitable building or buildings, (*Sec. 2.*) The moral and religious instruction of the inmates was to be in conformity with the doctrine and discipline of the Protestant Episcopal Church, and under the superintendence of the bishop of the diocese, (*Sec. 3.*) The parishes of the diocese were entitled to representation in the board by one or more members from each board, and the board were required to give representation to each parish by appointing additional trustees, if necessary, but the Bishop, for the time being, of the diocese, and the rectors, for the time being, of the parishes, were always to be members of the board, (*Sec. 4.*) These trustees were authorized to make and adopt by-laws, rules and regulations.

These by-laws provide (*Def't's Exh.* No. 1. *Amendment to Record*, p. 25,) that the lay members of the board to be elected are to be nominated by the Rector of the parish they are to represent. A Visiting and Inspecting Committee is authorized to make such orders and establish such regulations as they think proper to carry into effect the objects of the institution, and admission to the institution is allowed by the Sister-in-charge and House Phy-

sician, subject to the approval of the Visiting Committe. They are required to see that no patient be allowed to remain in the hospital when in a condition to be discharged, and that all patients whose disease be incurable, be removed with the least possible delay. (*Ibid.* p. 26, Art. X., Secs. 1, 2 and 3.) The superintendence and internal management of the hospital are committed to the charge of the Sisterhood of the Order of St. Elizabeth, subject to the rules. (*Ibid.* p. 27, Art. XIII.) As to the admission into the hospital, the rules (*Deft's Exh.* No. 2, *Amendment to Record*, p. 27,) provides only for the admission of persons suffering from accident or disease, and admission of patients who live out of Newark must be upon certificate of a physician, stating the nature and probable duration of the disease. Pay and private patients are also provided for.

It is evident from these extracts that this institution is a hospital, is purely for the sick, and it has always been so conducted, none but sick persons being admitted — the general rule being that no patients or inmates are allowed to remain when in a condition to be discharged. (*Speiden, Record*, p. 64.)

This hospital is in no respect different from dozens of hospitals which were in existence in Philadelphia at the time the testator made his will, and in devising his property to found a *Retreat and Home* for disabled or aged and infirm and deserving American mechanics, it could never have been within his contemplation, that the funds would be divided among *hospitals*—founded to take care of the sick. Had hospitals been embraced within his intention he surely would have expressed it.

The effort of the Trustees, by mere resolutions on paper, to constitute the hospital such an institution, as was intended by the testator, is as futile as their attempt to create a "Home" by putting up a sign "Hayes Home" over the door of one of their hos-

pital rooms, (*Speiden*, *Record*, p. 63,) or by putting up a tablet inscribed "Hayes Mechanics' Home" between two beds that are to be designated in one of their wards. (*Ward*, *Record*, p. 59, &c.)

Independent of any other considerations, the fact that this hospital is expressly intended to be under exclusive sectarian management, would, in New Jersey, prevent its receiving the funds intended for the establishment of a purely eleemosynary charity, such as the testator contemplated. In *Attorney-General* v. *Moore's Execrs.*, 4 C. E. Green, (19 N. J. Eq.,) 503, (Court of Errors and Appeals, 1868,) Mr. Justice DEPUE, delivering the opinion of the Court, says, p. 514: "An eleemosynary charity is essentially unsectarian, both in its management and in the scope of its benevolence, and it can only become sectarian in either respect when such restrictions or limitations are imposed by the declared intent of the donor in the instrument of foundation."

There are also two other objections to the selection of this hospital, which, in this Court, should be considered fatal.

These are (1). That the testator's will, made in Pennsylvania, cannot be considered to contemplate any institution in any State foreign to that of his domicile. Nothing but the clearest express language would justify the Court in holding that any foreign institution could be selected by the executors. Such selection would put it out of the power of the courts or officers of Pennsylvania to enforce the trust, if it was violated.

And (2). The will confines the selection of any institution to those existing at the time of the testator's death, and this hospital was not founded until twelve years afterward. The language of the will, giving direction to the executors upon this point, is "to appropriate and use the income or principal thereof for the purpose of founding and supporting,

or writing in the support of any insitution *that may be then founded*, to furnish a retreat and home for disabled, or aged and infirm, and deserving American mechanics." (*Record*, p. 11.)

FIFTH POINT.

The appellant was properly held liable for interest on the fund and the costs of suit.

The decree of the Circuit Court adjudged (*Record*, pp. 77 and 78,) that the appellant should pay to the Home, not only the sum of $5,153.27, the balance in his hands as administrator, on the settlement of his account, but also interest thereon from January 10, 1884, the date of the settlement of the account, (see *Answer*, p. 14, par. 10,) together with complainants' costs and charges in the suit.

This was made for the reason that the evidence showed that the appellant, after notice of the claim of the Home to the fund, and after a promise to its treasurer not to pay the fund over without giving the Home an opportunity to substantiate its claim in court, subsequently paid over the fund to the St. Barnabas Hospital without any notice to the appellees, without any application to any court for instruction, and at his personal risk deliberately taken. Contemplating a liability to be called to account, he required the Hospital to indemnify him against loss by reason of the payment of the money to it, and secured this indemnity by a mortgage on their property, (*Record*, p. 41.) The Hospital, by the act of this trustee, have had the use of the money ; and their use of it, if it was illegally paid over, will, so far as the Home is concerned, be considered as the use of a trust fund by the trustee, as his own money and for his own purposes. By no other decree could the Home receive the use of

the money to which it was entitled, from the time the appellant settled his accounts as administrator. The appellant had the right to go into the Court of Chancery for instructions as to his duty if he was in doubt, under the practice settled by *Attorney-General* v. *Moore's Executors*, 4 C. E. Green, (19 N. J. Eq.,) 503–519, (Court of Errors and Appeals, 1868,) and it was the original intention of the appellant to apply to the proper court for instructions. He was notified by a letter of Mr. Pratt on November 15, 1882, (*Record*, p. 65,) that the Hayes Mechanics' Home had been founded and claimed the balance of the proceeds of sale after settlement of the account, and by his letter of November 22, 1882, in reply, (*Record*, pp. 65 and 66,) he asks Mr. Pratt whether the income could be applied to a bed for mechanics in "our" hospital at Newark; to which letter Mr. Pratt answers, on November 24, 1882, (*Record*, p. 66,) that he cannot consent to any division of the fund, and giving fuller information as to the founding of the Home.

The property was sold in June, 1883, and the appellant then wrote Mr. Pratt, (*Record*, p. 41; letter dated June 25, 1883,) that he had not yet considered what disposition to make of the money, but it should be *nothing but a legal one*, and that he would not dispose of it in any way without giving him ample opportunity to show that the Hayes Home was the only institution or person entitled to it, *even if he*, (the appellant,) *should be of a contrary opinion.*

The account of appellant, as administrator, was settled on January 8, 1884, and after this, on March 4, 1884, (see his communication to the trustees, *Record*, pp. 37 and 38,) the appellant wrote to the trustees that he desired, *with the sanction of the Court of Chancery*, to transfer this money to the hospital, for the sole and exclusive purpose expressed in the will, and that if they were willing to receive the fund and devote it to that object, he

would transfer the fund to them, *if the Chancellor should so direct;* and he also notified them of Mr. Pratt's claim to the money, as acting executor in Philadelaphia, and that he therefore desired a *disposition of it to be made under legal sanction.* (In this letter the appellant suppresses the fact that the Hayes Mechanics' Home had been founded for the purpose of carrying out the trusts, and that Mr. Pratt's demand for the money was on behalf of the Home.) Had the course indicated by this letter been pursued, the disposition of the money and the propriety of its payment to the hospital would have been settled by the Court of Chancery, after hearing all claimants, and the appellant, accounting simply for the fund and interest accruing in his hands, pending litigation, would have been protected from personal responsibility. But the hospital trustees, being apprehensive that the Court of Chancery might not authorize any such payment, or hoping, perhaps, after the payment was made to them to secure some terms or concessions from the Home, (see *Pratt's Evidence, Record*, p. 29, as to interview of Bishop Starkey,) prevailed on the appellant to pay over the money to the hospital, without any application to Court for instructions, and, in view of the claim which the Home was certain to make upon him for the fund, he required a bond of indemnity, secured by a mortgage on the hospital property. The terms of the indemnity expressly include the appellant's liability *for interest*, (see *Record*, p. 41, copy of clause from mortgage.)

No clearer case for charging a trustee with interest and costs can be presented, and if the Home is entitled to the principal, it must be entitled to interest, from the time the trustee voluntarily paid it out of his hands improperly, and gave the use of it to others. The present claim that this payment was made *bona fide*, on the opinion of counsel, is wholly unfounded. The only pretence

of opinion of counsel is a letter written in 1870, and during his father's lifetime, to the appellant's brother, *Charles Hayes*, who was then a trustee of the hospital, (see letter, dated April 23, 1870; *Rec.*, p. 35.) This letter supresses all mention or consideration of the important fact that the Hayes Mechanics' Home had been founded by the executors, under the will.

The appellant, on March 4, 1884, did not rely on the opinion, for in his letter of that date to the Trustees of the hospital, (*Record*, p. 38,) he mentions the opinion, but says, in view of Mr. Pratt's claim, he must have the sanction of the Court before paying. The opinion of their counsel, (Mr. Parker and Mr. Keasbey,) was that St. Barnabas' Hospital was a proper institution to receive the fund; but it was not their opinion that he could safely pay it over without the direction of a court. Neither of these gentlemen was the appellant's counsel in reference to the payment, and his own counsel, (Judge Stevens) only advised him that if he did pay it over he should get a bond of indemnity, (*Record*, p. 42.) The appellant says expressly that, after writing his letter to Mr. Pratt, he made up his mind that he would decide the question for himself, and take the risk of his decision being right, without any application to the Court. (See *Record*, p. 43.)

In New Jersey, and some other States, the rule is, that wherever the trustee is chargeable with interest in a suit necessitated by his own misconduct, costs will follow, as matter of course.

Frey v. *Frey's, Adm'r*, 2 C. E. Gr. (17 N. J. Eq.) pp. 71, 75. (Chancellor GREEN, 1864.)

2 Perry Trusts, §900.

I respectfully submit that the decree should be affirmed, with costs, in this Court.

JOHN R. EMERY,
Counsel for Appellees.

New Jersey Statutes and Reply to Brief and Points of Appellant.

As to *First* assignment of error and First Point, (p. 9, &c., of appellant's brief,) that there was a misjoinder of complainants in the suit, I reply, (1), That an objection for misjoinder of complainants appearing by the bill, must be taken by demurrer, and will be disregarded at the hearing, if it does not affect the propriety of the decree.

1 *Dan. Ch. Prac.*, Perk. Ed. 304.

Story's Eq. Pleading., Sec. 544.

The objection will certainly be disregarded on appeal.

(2). There was no misjoinder, the complainant executor being the trustee and the Hayes Mechanics' Home the *cestui que trust* of the whole fund claimed, and it is for the protection of the defendant that they are joined, thus enabling all questions to be certainly decided in a single suit. That the joinder of the Home as a party complainant was proper, even if the money was to be paid over to the complainant executor, because the Court has the right, in cases like the present, to know the purpose to which the executor intends to devote the money, and to give the parties interested a hearing.

As to *Second Point.* (Appellant's brief, p. 22, &c.) As to the alleged agreement between Wells and Jabez Hayes' executors, (p. 13, &c.,) as to separating the estates, we reply that even if there was such an agreement (which is not proved), it was wholly illegal and ineffectual, inasmuch as the *whole* estate of a testator must be disposed of according to his will, and according to law. No agreement or course of conduct between the trustees can be allowed to divert the fund. There is no pretence

of any agreement on Wells' part that any institution except the Home should have any portion of the estate.

If Wells was derelict in his duty to look after the New Jersey assets, this is no reason for refusing to allow the present executor to follow them. He never knew of the real estate in New Jersey until after the death of Jabez W. Hayes. (*Record*, p. 24.)

As to *Third Point.* (Appellant's brief, p. 14, &c.) To the objection that Mr. Pratt as succeeding executor, appointed in Pennsylvania, had no right as such executor to bring suit in a New Jersey court to call the ancillary administrator to account, I reply that the cases referred to as sustaining this point, (*Noonan* v. *Bradley*, 9 Wall. 394, and *Johnson* v. *Powers*, 139 U. S. 156,) are based on the general principles of law as unaffected by statutes, and they deny this right, unless given by statute of the State in which suit is brought. This right is expressly given by the N. J. Statute. Acts 1879, *Pamphlet Laws*, p. 28. *Supplement to Revision* of 1877, p. 294 :

> "Be it enacted by the Senate and General Assembly of the State of New Jersey, That any executor or administrator, by virtue of letters obtained in another State, may prosecute any action in any Court of this State, without first taking out letters in State; provided such executor or administrator shall, upon commencing suit, file in the office of the Clerk of the Court in which such suit shall be brought, an exemplified copy of the record of his or their appointment; provided, also, that if security for costs be demanded, said executor or administrator shall file such security at the same time, and in the manner as the same is now required of non-residents who shall prosecute any action in this State.

"And be it enacted, That this act shall take effect immediately.

"Approved February 19, 1879."

This act gives a foreign executor or administrator, who has any cause of action whatever against any resident of New Jersey, the right to prosecute such claim without taking out letters, and includes this action within its provisions. And the action having been properly commenced in the New Jersey Court of Chancery, the Circuit Court of the United States, in its removal, recognized this new equitable right given by a New Jersey statute, and will enforce it within its jurisdiction.

See *Walker* v. *Walker*, 9 Wall. 754, where Justice DAVIS says: "The Circuit Courts of the United States, with full equity powers, have jurisdiction over executors and administrators, where the parties are citizens of different States, and will enforce the same rules in the adjustment of claims against them that the local courts administer in favor of their own citizens."

The argument of the defendant's counsel under this point, pressed to its logical conclusion, goes to the extent that no person whatever can call the ancillary administrator to account, no matter what disposition he makes of the funds. He could even have retained them for his own use without accountability to complainants or any other persons; for if not accountable to them he is accountable to no one.

As to the objection that application should have been made to the Orphans' Court, (p. 18,) the limited jurisdiction conferred upon the Orphans' Court by the act of 1872, referred to, was cumulative merely, did not make it compulsory on parties claiming under a will to apply to the Orphans' Court, nor at all interfere with the ancient jurisdiction of the Court of Chancery. The case of *Frey* v. *Demarest*, 1 C. E. Gr. 236, 237, referred to in this point in my brief, has been followed by a